



## Constance McDonnell QC

Year of Silk: 2019 Year of Call: 2000

*“A master of her field”*

Chambers & Partners HNW Guide

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### Practice Overview

Constance has a traditional Chancery practice specialising in contentious probate, trust disputes, 1975 Act claims, administration of estates, and removal of personal representatives. She has appeared recently in several highly publicised High Court cases, including *Schrader v Schrader* (a successful probate claim based on undue influence), *Re Smith* (concerning capacity to make a lifetime gift), *Gestrust v 16 Defendants* (a trust dispute) *RBC v Stubbs* (a rectification claim) and *Gupta v Gupta* (a probate dispute about knowledge and approval). In 2016-17 she was Junior Counsel for the Respondent in the landmark 1975 Act case of *Ilott v The Blue Cross* [previously *Ilott v Mitsos*] in the Supreme Court.

Her practice also includes constructive trusts and proprietary estoppel, Court of Protection (property and affairs), and professional negligence.

Prior to taking Silk in 2019, Constance won the Chancery Junior of the Year award at the 2018 Chambers Bar Awards, and was recommended as a Star Individual in Chambers UK Bar Guide 2019 and High Net Worth Guide 2018.

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### Areas of Expertise

#### Private Client Trusts and Probate

*Barker v Constance* [2019] EWHC 1401 (Ch): Constance acted in a trust dispute involving opposing minor litigants,

in which Morgan J gave guidance as to the liability of a minor and of a litigation friend for costs.

*Wellesley v Wellesley* [2019] EWHC 11 (Ch): Constance acted for the successful defendants in a claim by an estranged adult child against her father's estate under the Inheritance (Provision for Family and Dependents) Act 1975.

*Gupta v Gupta* [2018] EWHC 1353 (Ch): Constance acted for the successful party in proceedings concerning knowledge and approval of a will made by an Indian testatrix.

*Patel v Patel* [2017] EWHC 3229 (Ch): Constance acted for three defendants in an application for committal for contempt of court arising out of the fact they had given false sworn evidence as witnesses in a probate dispute.

*Ilott v The Blue Cross and others* [2017] UKSC 17 [previously *Ilott v Mitson*]: Constance was Junior Counsel for the Respondent in this landmark case, which is the first appeal ever to be heard in the Supreme Court in a 1975 Act claim.

*RBC Trustees (CI) Limited v Stubbs* [2017] EWHC 180 (Ch): Constance acted for the Settlor in an application by trustees for rectification or rescission of a deed of revocation and new appointment.

*Gestrust SA v Sixteen Defendants* [2016] EWHC 3067 (Ch): Constance acted for the Trustee in an application for directions as to how to direct companies which were ultimately wholly owned by the trust in relation to proceedings brought against those companies by a third party associated with several of the beneficiaries. The Court considered whether the companies should be treated as trust assets, and the extent of the Trustee's Bartlett duties.

*Re Smith, Kicks v Leigh* [2015] 4 All ER 329: Constance acted for the successful claimants in proceedings to set aside a lifetime gift which had been procured by the donor's daughter's presumed undue influence. The case was reported because of the deputy Judge's decision as to the applicable test for mental capacity to make the gift.

*Bray v Pearce*, 6 March 2014: Constance acted for the successful Claimant in proceedings to set aside the last three wills made by an elderly testatrix who lacked testamentary capacity due to paranoid delusions.

*VIVA! Campaigns Ltd & The Vegetarian Society v Scott* [2014] WTLR 525 and [2014] WTLR 461 [costs]: Constance acted for the successful charitable Claimants in proceedings to prove a will made by a schizophrenic testator.

*Sheffield v Sheffield* [2014] WTLR 1039: Constance defended a professional trustee against allegations of breach of trust.

*Schrader v Schrader* [2013] WTLR 701: Constance acted for the successful Part 20 claimant in proceedings to set aside his mother's will on the basis that it had been procured by his brother's undue influence.

*Tamlin v Edgar, The Times*, 23 February 2012: Constance acted for minor and unborn beneficiaries of two family trusts in an application for the Court's approval of a decision of the Trustees.

*Wharton v Bancroft* [2012] WTLR 693 and [2012] WTLR 727 (costs): Constance acted for the successful claimant in proceedings to prove her husband's 'deathbed' will. The claimant was awarded indemnity costs.

*Devas v MacKay* [2009] EWHC 1951 (Ch): Constance acted for the successful claimants in proceedings to set aside a will purportedly made by their mother in favour of her carer's son.

*Knight v Edonya* [2009] EWHC 2181 (Ch): Constance acted for the successful claimant in proceedings to prove her stepfather's will.

*Sinclair v Sinclair* [2009] EWHC 926 (Ch): Constance acted for the trustees of a family trust in a claim arising out of various breaches of trust by a constructive trustee, involving issues as to his liability to account and whether he could rely upon proprietary estoppel.

*Raymond Saul & Co (a firm) v Holden* [2009] Ch 313, [2009] BPIR 50: Constance acted for a successful trustee in bankruptcy on the issue as to whether the residue of the bankrupt's mother's estate was payable to the trustee in bankruptcy.

*Caudle v LD Law Ltd* [2008] 1 WLR 1540, (2008) 11 ITELR 882: Constance acted for the successful Defendant on an appeal as to whether a prospective Administrator of a deceased's estate had locus standi to claim assets of the estate.

*Heyman v Dobson* [2010] WTLR 1151: removal of personal representative and costs.

*Bonham v Blake Laphorn Linnell* [2006] All ER (D) 164 (Oct): breach of trust and solicitors' negligence

*Evans v HSBC Trust Company (UK) Ltd* [2005] WTLR 1289: Constance acted for the successful claimants in a proprietary estoppel claim against the estate of their friend and neighbour.

*Cox v Jones* [2004] 2 FLR 1010: constructive trust claim between cohabitantes.

*Khiaban v Beard* [2003] 1 WLR 1626: Constance acted for the successful appellant in a 'leapfrog' appeal to the Court of Appeal on the issue as to whether the Court could require a claimant to increase value of his claim.

*Carapeto v Good* [2002] WTLR 801: Constance acted (with leading counsel) for the successful claimant in proceedings to propound a will made in her favour.

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## **Court of Protection**

Constance regularly advises on, and appears in Court in, applications in the Court of Protection relating to patients' property and affairs.

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## Recommendations

Silk in the field of Chancery: Traditional: Chambers & Partners (2021): She has a *"professional approach"* and *"a wealth of experience and knowledge. She is excellent at putting forward tactical solutions to resolve problems."* *"She works fantastically hard, is very calm and is very pleasant to deal with."*

Silk in the field of Court of Protection: Property & Affairs by Chambers & Partners (2021): *"Great at cutting through all the nonsense and being practical. She really communicates very well with her clients, and outlines everything that needs to be done."* *"She delivers advice in a very confident, inspiring way."*

Silk (2019 Silks) in the field of Private Client Client Trusts and Probate by The Legal 500 (2021): *"Is an incredibly measured and astute litigator and is never ruffled and supremely cool under pressure. She is also steely and hugely determined to do the best for her clients."*

Silk in the field of Chancery: Traditional: Chambers & Partners High Net Worth (2020): "I am very impressed with Constance's professional approach, wealth of experience and knowledge. She is excellent at putting forward tactical solutions to resolve problems," "I think she is fantastic," "She works fantastically hard, she is very calm and she is very pleasant to deal with - good to deal with if she's on your side and on the other side as she's fair."

Private Client (Who's Who Legal: UK Bar, 2020)

Silk (2019 Silks) in the field of Private Client: Legal 500 (2020): "Is one of the most intelligent barristers at the Chancery Bar and identifies key points of law and factual issues which would be missed by other counsel."

Leading Silk (New Silks) in the field of Chancery: Traditional: Chambers & Partners, (2020): "She's friendly, approachable, concise, articulate and commercial. She's sensitive to the wider issues while cutting through the situation and being practical about the possible outcomes." "She's second to none in legal understanding."

Leading Silk (New Silks) in the field of Court of Protection: Property & Affairs - All Circuits: Chambers & Partners (2020): "She is super intelligent, calm and thoughtful. She's also fantastic with lay clients." "She gets into complex matters incredibly quickly, and is highly knowledgeable, eloquent and extremely pleasant to instruct."

Leading Silk (New Silks) in the field of Chancery: Traditional by Chambers High Net Worth (2019): New silk Constance McDonnell QC is highly respected in the traditional chancery market for her handling of the most high-profile matters, including the notable Ilott case. "I cannot speak highly enough of her. She's friendly, approachable, concise, articulate and commercial. She's sensitive to the wider issues while cutting through the situation and being practical about the possible outcomes," comments one solicitor. Another says: "She's second to none in legal understanding. She's always clear, with a lovely manner - softly spoken and calm."

Leading Junior (Star Individual) in the field of Traditional Chancery by Chambers & Partners Bar Guide (2019): "Absolutely the best junior I have ever seen, hands down. She absolutely delivered on mine and the client's expectations." "When you have a big case, you want to get her quick or the other side will get there first."

Leading Junior (Band 2) in the field of Court of Protection: Property & Affairs by Chambers & Partners Bar Guide (2019): "She's a go-to barrister for contentious probate matters. She's authoritative, persuasive and has all the relevant technical skills." "She has an encyclopaedic knowledge of the law in this area and always has the answer at her fingertips. She gives robust advice and isn't afraid to take a forceful position when needed."

Leading Junior (Tier 2) in the field of Private Client: Trusts and Probate by Legal 500 (2019): "Technically brilliant for more complicated and higher-value contested probate disputes."

Leading Junior (Star Individual) in the field of Traditional Chancery by Chambers & Partners UK Bar Guide (2019) and High Net Worth Guide (2018): *"Absolutely the best junior I have ever seen, hands down. She absolutely delivered on my own and my client's expectations."* *"When you have a big case, you want to get her quick or the other side will get there first."* *Constance McDonnell is "a master of her field" and "one of the best in the business."* *She regularly handles contentious trust and probate disputes, and is a "go-to person for 1975 Act claims."* *"She's very decisive and has a great manner with the clients", "extraordinarily good."*

Leading Junior (Tier 2) in Private Client: Trusts & Probate by the Legal 500 (2019): *"Technically brilliant for more complicated and higher-value contested probate disputes."*

Private Client (Who's Who Legal: UK Bar, 2019)

## Quotes

Leading Silk (Band 2) in the field of Chancery: Traditional: Chambers & Partners (2021): She has a *"professional approach"* and *"a wealth of experience and knowledge. She is excellent at putting forward tactical solutions to resolve problems."* *"She works fantastically hard, is very calm and is very pleasant to deal with."*

Leading Silk (Band 3) in the field of Court of Protection: Property & Affairs by Chambers and Partners (2021): *"Great at cutting through all the nonsense and being practical. She really communicates very well with her clients, and outlines everything that needs to be done."* *"She delivers advice in a very confident, inspiring way."*

Leading Silk (2019 Silks) in the field of Private Client Trusts and Probate by The Legal 500 (2021): *"Is an incredibly measured and astute litigator and is never ruffled and supremely cool under pressure. She is also steely and hugely determined to do the best for her clients."*

Leading Silk (Band 2) in the field of Traditional Chancery by Chambers & Partners High Net Worth (2020): *"I am very impressed with Constance's professional approach, wealth of experience and knowledge. She is excellent at putting forward tactical solutions to resolve problems,"* *"I think she is fantastic,"* *"She works fantastically hard, she is very calm and she is very pleasant to deal with - good to deal with if she's on your side and on the other side as she's fair."*

Leading Junior (Star Individual) in the field of Traditional Chancery by Chambers & Partners High Net Worth (2018): *"a master of her field"* and *"one of the best in the business."* She regularly handles contentious trust and probate disputes, and is a *"go-to person for 1975 Act claims."* *"She's very decisive and has a great manner with the clients,"* says a source, adding: *"She is one of the most knowledgeable barristers for proprietary estoppel and mutual wills, though she can also advise on a very broad scope of matters."* Another commentator states: *"She is absolutely the best junior I have ever seen, hands down. She absolutely delivered on my own and my client's expectations. She was extraordinarily good."*

Leading Junior (Band 1) in the field of Traditional Chancery by Chambers & Partners Bar Guide (2018): *"A consummate performer on her feet, she really knows her stuff and you can't get one over on her."* *"She is very in-demand, is incredibly bright, and has great commercial instincts."*

Leading Junior (Band 2) in the field of Court of Protection (Property and Affairs) by Chambers & Partners (2018): *"She's very good with lay clients and has a calm, authoritative manner."* *"She is a very persuasive advocate and an ideal choice for Court of Protection work."*

Leading Junior (Band 1) in the field of Traditional Chancery by Chambers & Partners (2017): *"She is very clear and very authoritative in the area of trusts and probates. Very clear, she is brilliant with clients and understands how to do deals in cases. She's a fighter."*

Leading Junior (Band 2) in the field of Court of Protection (Property and Affairs) by Chambers & Partners (2017): *"She is extremely knowledgeable and comes across extremely well in court."* *"She's very clear, very authoritative and very clever."*

Leading Junior (Band 1) in the field of Traditional Chancery by Chambers & Partners (2016): *"A superior junior who concentrates her practice on complex contentious probate and trusts matters, and also frequently handles Court of Protection cases. Her traditional chancery practice also comprises regular instructions regarding Inheritance Act claims and professional negligence suits."* *"She is excellent and extremely bright. Clear in her advice and very good both on her feet and in conference with clients, she provides a very clear analysis of the law."*

Leading Junior (Band 2) in the field of Traditional Chancery by Chambers High Net Worth (2016): *"first-class advocacy style and sound knowledge of contentious probate matters." "really fantastic. I think she will be a star at the Bar. She comes across as lovely and she is quite steely and ruthless in terms of her approach. She is really up for a fight, while also giving advice about what the solicitors need to watch. The presentation to the other side doesn't give an inch. You just know you are in good hands." "She has a nice style, she oozes competence and really knows her stuff." "She has a wealth of experience of probate and Court of Protection matters. Her impressive presence in court belies her approachability with clients. She is a pleasure to work with and always proves herself to be an indispensable member of a team."*

Leading Junior (Band 3) in the field of Court of Protection (Property and Affairs) by Chambers & Partners (2016): *"Has a reputation as an effective litigator with experience of contentious chancery and Court of Protection matters. In particular, she is held in high regard for issues dealing with capacity." "I think she is brilliant. She is very bright, sensible, practical and very good with clients. She is very clear and very good at calling how a case is going to go. She gives clients real confidence."*

Leading Junior (Tier 4) in Private Client: Trusts and Probate by the Legal 500 (2016): *"She is highly intelligent, thoughtful and robust in her advice, and very effective in court."*

Leading Junior (Band 1) in the field of Traditional Chancery by Chambers & Partners (2015): *"A leading junior in the contentious probate world. She is very calm, very clear, and very good with the lay client, and really inspires confidence." "She is an excellent advocate and her preparatory skills are first-class. Takes a very good commercial approach."*

Leading Junior (Band 3) in the field of Court of Protection (Property and Affairs) by Chambers & Partners (2015): *"A superb advocate who completely sticks to her guns and fights her client's corner." "She combines an impressive knowledge of the law with a calm but persuasive manner."*

Leading Junior (Band 1) in the field of Traditional Chancery by Chambers & Partners (2014): *"A firm favourite of both clients and instructing solicitors", "Incredibly knowledgeable, unflappable and very precise," "Truly a formidable advocate", "She has a calm and authoritative manner which is effective with both judges and clients"*

Leading Junior (Band 3) in the field of Court of Protection (Property and Affairs) by Chambers & Partners (2014): *"A sharp, intelligent barrister who is impressive on her feet. She has a concise and to-the-point manner."*

Leading Junior (Band 2) in the field of Traditional Chancery by Chambers & Partners (2013): *"extremely bright and very user-friendly"*

Leading Junior (Band 2) in the field of Traditional Chancery by Chambers & Partners (2012): *"Constance McDonnell belies her relatively young year of call by the fact that she is rarely led in cases, a number of which are often intimidating wills, trusts and succession dispute instructions"*

Leading Junior (Band 3) in the field of Traditional Chancery by Chambers & Partners (2011): *"She has proven herself invaluable to clients who note that she has been 'comprehensively excellent in all her dealings with us'."*

Leading Junior (Band 3) in the field of Traditional Chancery by Chambers & Partners (2010): *“Solicitors praise Constance McDonnell as ‘one of the best advocates we’ve instructed; she presents well, maintains simple and focused arguments, and remains hands-on rather than at arm’s length.’ Her traditional chancery practice has a specialist focus on real property, trusts and probate.”*

Leading Junior (Band 3) in Chambers & Partners (2009): *“forthright, incisive and not easily intimidated”*.

Also recommended as a Leading Junior in Chambers & Partners in 2008 and 2007: *“exceptionally intelligent”* and one *“whom clients are confident about instructing on substantial matters as she always rises to the occasion”*.

## **Publications**

Article in New Law Journal October 2019 2019: *'Claims to fame'*

Quoted in The Daily Telegraph April 2019: *'New rules to stop 'predators' from tricking vulnerable into marriage delayed by Brexit'*

Article in New Law Journal March 2019 *'I don't want my child to have a penny!'*

Articles in the Law Society Gazette, July 2018; New Law Journal January/July 2018; STEP Journal March/Aug/Sept 2018 and The Times about revocation of a will by marriage where testator lacks capacity to marry

Articles about *Ilott v The Blue Cross* in the STEP Journal, March 2018 and Trusts & Trustees, 2017

Article about electronic and oral wills: a new age of testacy in Family Law, September 2017

## **In the Press**

*'Constance McDonnell QC examines the year's most notable 1975 Act decisions'*, The New Law Journal, 25 October 2019

*'New rules to stop 'predators' from tricking vulnerable into marriage delayed by Brexit'*, The Daily Telegraph, 22 April 2019

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## **Education & Qualifications**

MA in Classics, Oriel College, Oxford

## **Memberships**

ACTAPS (Committee member)

STEP

Chancery Bar Association

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