



## Practice

Shu Shin has a civil / public law practice which covers the full range of social welfare law, including community care (adult and children's social care), mental health, housing and immigration. Her expertise lies largely with the legal obligations in domestic, human rights and EU law to provide support to children 'in need' and vulnerable adults. Her main client group includes vulnerable children and young adults (including 18+ care leavers) with particular complex needs, including significant disabilities; homelessness; in or leaving custody; mental illness; victims of trafficking, unaccompanied and age-disputed migrant children. She is frequently instructed by the Official Solicitor in complicated cases raising best interest issues relating to disabled children and migrant children.

**Social welfare / Children Act / Housing:** Shu Shin is a children's rights expert who has brought successful challenges against social services and health authorities in respect of failings in provision of support and accommodation for vulnerable children and young adults. Her practice covers disputes over s20 accommodation under the Children Act 1989, leaving care duties, and other transition to adulthood duties, inter-authority disputes over duties owed to vulnerable young people, closures of care homes and day centres, adult and child protection, mental health, supported housing, adult and child social care policy and eligibility criteria, continuing NHS care disputes. She is particularly interested in the conflicts that arise from the overlap between the Children Act 1989 and other legislative provisions, Housing Act, National Assistance Act and Education Act. See for example, *R (RO) v East Riding of Yorkshire CC [2011] EWCA Civ 196*, which established the test for when a s20, Children Act 1989 can be brought to an end. She is regularly successful in obtaining urgent relief and injunctions both in court and out of hours on behalf of her clients.

**Age Disputes, Trafficking and Immigration Law:** Shu Shin's specialist immigration law background has provided her with the strong foundation to advocate on behalf of migrant children and young people in the full range of judicial review challenges, ranging from challenges to termination of support and accommodation under the Children Act 1989, age dispute challenges, claims involving the unlawful detention and removal of age-disputed children and challenges to the failure of state authorities to protect victims of trafficking by either prosecuting them or refusing / failing to provide them with suitable support, counselling and accommodation. She was junior counsel in *R(FZ) v LB of Croydon [2011] EWCA Civ 59*, the guideline case on how the reviewing court should assess whether to grant permission in an age dispute judicial review claim. She represented FZ as a sole junior in the first instance. She was also junior counsel in *SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284* which established the correct test for adjourning and removing asylum appeals from the Detained Fast Track, i.e. that a case must be adjourned / removed from the DFT in order to allow a party (in that case, an age disputed minor) to answer the case against him by way of evidence (e.g. a social work report on his age). The case has a far-reaching impact which would make it difficult for any case to remain within the DFT where there is a genuine dispute on which the appellant wishes to adduce relevant evidence.

**Education:** Shu Shin regularly appears on behalf of parents in SENDIST appeals, school exclusions and admissions appeals and judicial review proceedings. She has particular experience in disability discrimination-related and

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2006

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**Education**  
Yale University, BA in History and Politics (Cum Laude); London School of Economics, MSc in Human Rights (Distinction)

**Languages**  
Chinese (Mandarin and Cantonese)

**Practice Areas:**  
Shu Shin Luh is a member of the following Practice Areas:  
- Civil Law  
- Claims Against The Police & Public Authorities  
- Community Care  
- Housing  
- Immigration - Asylum and Human Rights  
- International Advice and Litigation  
- Mental Health  
- Prison Law  
- Public & Administrative Law

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regulatory matters. She was led junior in *A v Essex CC [2010] UKSC 33*, currently pending at the Strasbourg court. She also has a further pending Strasbourg Application (*KS v the United Kingdom*) which, if admitted, will present the Strasbourg court with the first opportunity since 1951 to consider the substantive meaning of the right to education under Article 2 Protocol 1, ECHR and consider whether the imperfect provisioning of education to migrant children in the UK is discriminatory.

**Prison law:** Shu Shin is experienced in handling sensitive and difficult parole applications for young sex offenders and those subject to indeterminate and extended sentences for public protection. She also advises regularly on public law challenges against prison authorities, probation and social services for failures in respect of planning for the release of vulnerable children and young adults particularly where there is historic failings by children's services and health authorities to take responsibility for the young people.

**Public Authority Negligence:** Arising out of her work with children and young people, Shu Shin has developed an expertise in damages claims against public authorities both as a sole and led junior, including social services, health, education, police and immigration authorities.

**Family:** She also represents children in proceedings in the family courts parallel to ongoing judicial review applications, including wardship applications, appeals against secure accommodate orders, applications to discharge care orders.

## Recent Notable Cases

***A v Essex CC [2010] UKSC 33:*** First test case on the meaning of Article 2 Protocol 1 right of access to effective education under the European Convention on Human Rights for disabled children. Has been involved as junior counsel in the matter since 1st instance, first as a pupil and then as a led junior in the Court of Appeal. Application to the European Court of Human Rights currently pending.

***R (FZ) v LB of Croydon [2011] EWCA Civ 59:*** Guideline case on how the court and the local authority are to resolve age disputes. The Court of Appeal set out the correct approach at the permission stage of an age dispute judicial review claim and laid down clear guidelines on the fairness required in the local authority's assessment of a putative child. For judgment and analysis of the case, [click here](#).

***R (RO) v East Riding of Yorkshire [2011] EWCA Civ 196:*** A local authority is not entitled to terminate a duty under s20, Children Act 1989 and cease to look after a child under ss22 and 23, Children Act 1989 without an assessment of the child's needs. In circumstances where the criteria under s20, Children Act 1989 remain met, the duty to accommodate continues irrespective of a statement of special educational needs naming a residential school in Part IV. The Children Act 1989 has primacy over the Education Act 1996 where welfare provisions are concerned, and s22(3A), Children Act 1989 provides that the safeguarding welfare duty includes a duty to promote the educational achievement of a 'looked after child'. For judgment and analysis of the case, [click here](#).

***SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284:*** Guideline case establishing the correct test for adjourning and removing asylum appeals from the Detained Fast Track. Hearings held in the Detained Fast Track (DFT) must be adjourned, and if necessary, taken out of the



DFT, in order to allow a party to answer the case against him by way of evidence unless it would be pointless to do so. In the present appeal, the appellant was an age disputed minor in immigration detention and he sought an adjournment / removal of his case from fast track to secure his own social work report on age. The First Tier Tribunal's failure to grant the appellant an adjournment / take his case out of fast track had been unlawful and the Upper Tribunal also acted unlawfully by dismissing the appeal on the basis that the FTT had not acted irrationally and new evidence would not have made a difference (i.e. failing to apply the "pointlessness test"). The legal test established will make it very difficult for any case to remain within the DFT where there is a genuine dispute on which the appellant wishes to adduce relevant evidence. For judgment, [clickhere](#).

***R (YA) v LB of Hillingdon [2011] EWHC 744 (Admin) and R (Y) v LB of Hillingdon [2011] EWHC 1477 (Admin)***: First full substantive age dispute trial to succeed in obtaining a declaration in favour of the Claimant, a trafficked young woman, now 18, who had been subject to domestic slavery since the age of 6. In the linked case of YA (Nigeria), the High Court had to consider for the first time special measures for a trafficked victim giving evidence in the Administrative Court on the issue of her age. The Court set down guidelines for how to approach the question of special measures for children given evidence in age dispute trials. For judgment in *Y*, [click here](#).

***R (AM) v LB of Croydon [2011] EWHC 6613 (Admin)***: The Court granted a declaration in favour of the Claimant child that he is the age he claims to be and granted a further declaration that he ought to have been so treated as a child from when he first presented to the local authority, and the duties owed to him as a child under the Children Act 1989 ought to have run from the time he first presented to the local authority.

***R (KS) v LB of Croydon [2010] EWHC 3391 (Admin)***: Three linked test cases on the LB of Croydon's failure to educate three unaccompanied asylum seeking children who have been out of school for more than a year. On the correct test for suitable accommodation under s19, Education Act 1996. Application to Strasbourg on liability and quantum of damages for breach of the claimants' right to education under Article 2, Protocol 1 pending at the European Court of Human Rights.

***KC v Newham London Borough Council [2010] UKUT 96 (AAC)***: Successful appeal against the First-Tier Tribunal's decision to strike out the Appellant's appeal against the contents of Parts 2, 3 and 4 of her grandson's statement of special educational needs. The Upper Tribunal held that there was a live issue to be determined in the appeal, and the FTT had jurisdiction to determine the issue irrespective of the fact that the Appellant's grandson was over the age of compulsory schooling.

***R (AW (Afghanistan)) v Croydon London Borough Council [2009] EWHC 3090(Admin), CI/2009/2647***: Permission to appeal against the decision of Collins J in the first instance granted on three grounds: (i) that the issue of age is a question of fact following the Supreme Court's decision in *A v Croydon* (ii) that public law principles of procedural fairness require the decision-maker to put adverse matters to the applicant child at the end of the assessment and provide the child with an opportunity to respond before a final decision on age is arrived at; and (iii) that the principle of the "benefit of the doubt" means that the local authority should start its factual appraisal of age affording the child the benefit of the doubt. This is arguably akin to placing the onus of disproving age on the



person disputing an asserted fact made by the applicant child. Appeal compromised by consent to remit fact of age hearing to the High Court. Decision of Collins J set aside.

## Pro Bono

Shu Shin regularly undertakes pro bono work in education, immigration, asylum support and social security matters. She is happy to accept pro-bono instructions in these areas.

She has experience in preparing pro bono appeals to the Privy Council on behalf of death row inmates and was a legal fellow in Port of Spain, Trinidad and Tobago during summer 2006 assisting the London Panel of Solicitors in such appeals. She was a second junior (led by Ed Fitzgerald QC) in a successful Privy Council appeal against conviction in *Lester Pitman v The State of Trinidad and Tobago* [2008] UKPC 16.

## Training / Advice

With several other members of Garden Court Chambers, Shu Shin edits and contributes to Garden Social, an information website which provides monthly updates on developments in social welfare law. (Click here for the website.)

Shu Shin regularly provides in-house training on the Children Act 1989, community care law, education law, migrant children's rights and rights of trafficked victims to solicitors, law centres and charities across the country. Shu Shin also advises national and international charities on legal issues.

## Background

Shu Shin was born and raised in Hong Kong and Taiwan. Prior to coming to the Bar, she worked as a part-time campaign assistant on the China Team of Amnesty International, where she investigated links between trade and human rights in China, particularly looking at the role foreign technology corporations play in assisting in the restrictions of free flow of information and free speech on China's internet. She helped edit the "Fair Trials" manual in Chinese (which is her first language).

She also spent six and a half years as a journalist for the *Washington Post*, the *Wall Street Journal*, the *Wall Street Journal* and the *Chicago Sun-Times*, writing extensively on issues ranging from consumer rights, immigration, crime and regional politics in Southeast Asia and China. She was a regular commentator on CNBC's Squawk Box, and has appeared on CNN and National Public Radio (NPR). She has won awards for investigations into detention of children in asylum care in the US, deaths arising from officer-involved shootings and price-fixing among grocery conglomerates. Around Asia, she has reported widely on labour and corporate management issues, particularly those involving major multinational clothing manufacturers' dealings in alleged sweatshops in Indonesia, Vietnam and Cambodia. In 2003, she published *Business the Sony Way* (John Wiley & Sons). In 2005, she published *The People of China* (Mason Crest Publishing) and *The Economy of China* (Mason Crest Publishing).

## Professional Membership



**Barrister profile**

# Shu Shin Luh



- Administrative Law Bar Association
- Human Rights Lawyers Association
- Immigration Legal Practitioners Association
- Education Law Association

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