

## Mark Lindsay QC

Year of Call: 1996 Year of Silk: 2011

mark.lindsay@axiomadvocates.com  
07739 639131



### Professional Career to date

Devil Masters: J.N. Wright QC, M. Bovey QC, D.A. Ogg QC.

2013: Part-time Chairman of the Police Appeal Tribunal

2013: Visiting lecturer at the Institute for Judicial & Legal Training, Port Louis, Mauritius

2011: Silk

1996: Called to the Scottish Bar

1995: Faculty Scholarship

1993-1995: Office of the Solicitor to the Secretary of State for Scotland (Civil Litigation Solicitor)

1991-1993: Tods Murray, W.S., Edinburgh (Trainee Solicitor)

1991: Articled Clerk, Walker Martineau, Solicitors, London

1991: Articled Clerk, Macallister Mazengarb, Wellington, NZ

1990: ESU Congressional Internship, Washington D.C.

### Education & Professional Qualifications

LLB, (Jt. Hons) in Public Law & Politics (1990) Postgraduate Diploma in Legal Practice (1991), at University of Glasgow (1986-1991)

Shaw Stewart Memorial Prize (1988)

Balfour Prize for Mercantile Law (1988)

### Areas of Expertise

- Commercial Contracts
- Commercial Property
- Competition and Public Procurement
- Professional Liability
- Public Law, Judicial Review and Human Rights

### Professional Experience

#### Public Law, Judicial Review and Human Rights

Mark was regularly instructed by the Advocate General, during the 12 years that he was a standing counsel, to represent his interests in the Scottish Courts in a wide range of judicial reviews. Mark was instructed to obtain interdicts to prevent the disclosure of the present names and addresses of Maxine Carr and Messrs. Venables and Thompson. In addition, he was instructed to resist human rights challenges to various aspects of the criminal injuries compensation scheme (Miss "S"), to the system of immigration judges and to the "sex offenders register" (Mr "A"), to the Home Secretary's policy relating to the detention of Foreign National Prisoners and to the vires of Rule of Court 41.59. Mark prepared the written statement of case for the Advocate General's written intervention in the William Beggs House of Lords appeal. Mark junioried to the Advocate General in the House of Lords in the

Sommerville appeal, which considered the relationship between the Scotland Act and the Human Rights Act. He has also junior'd to the Advocate General for Scotland in several "Devolution" Issues e.g. *Mills v H.M.A.* (No.2) which clarified the relationship between the Scotland Act and the Human Rights Act. Mark appeared in the first four Scottish appeals to the Supreme Court. Since taking silk he has continued to be instructed by the Advocate General and recently appeared in two appeals to the Supreme Court. One of these appeals related to the status in the United Kingdom of UN mandated refugees and the other appeal related to the use of SPRAKAB reports to determine nationality. He was also instructed by the Advocate General in a reclaiming motion in the Inner House which considered the lawfulness of the new Immigration Rules relating to Article 8. Mark is instructed by other public authorities, such as the Law Society of Scotland, the Scottish Legal Complaints Commission, the Scottish Information Commissioner, the Scottish Medicines Consortium, the Parole Board for Scotland and local authorities. For example, he was recently instructed by a local authority to advise on the legal and practical implications of changes to housing benefit legislation.

Although Mark is instructed predominantly by public authorities he also acts on behalf of individual and corporate petitioners. Mark has represented petitioners challenging the lawfulness of the Army Board's promotion procedures, the lawfulness of decisions made by the Care Commission, the lawfulness of a local authority's taxi licensing policy and the lawfulness of decisions made by the National Pharmaceutical Appeal Panel. Since ceasing to be a standing junior counsel for the Advocate General, Mark has acted on behalf of petitioners in immigration judicial reviews and statutory appeals in the Outer and Inner Houses. He recently appeared as senior counsel in an appeal to the Supreme Court relating to the assessment of the best interests of the child.

Mark has been instructed in many high profile F.A.I.s. He represented the Prison Service in three of the Cornton Vale F.A.I.s and has acted for the Medicines Control Agency in F.A.I.s relating to deaths caused by controlled medicines.

Mark is also regularly instructed in appeals from professional disciplinary bodies such as the Nursing & Midwifery Council and the Scottish Legal Complaints Commission.

### **Commercial Litigation**

Mark appears in the Commercial Court on behalf of pursuers and defenders and provides written advice on a wide range of commercial topics. He recently appeared as Senior Counsel in appeal to the Supreme Court relating to the validity of a Schedule of Dilapidations served upon a former sub-tenant after the expiry of the sub-lease.

At present he has instructions in actions relating to partnership disputes, oppression of minority shareholders, commercial agents, franchise disputes, landlord and tenant disputes, property development disputes, public procurement disputes, breach of directors' fiduciary duties, enforcement of restrictive covenants, enforcement of personal guarantees and general contractual disputes.

Commercial cases of significance include the reference to the Competition Appeal Tribunal of the Lloyds/HBOS merger, by the Merger Action Group, in which Mark was part of the legal team advising the Secretary of State for BERR and proceedings under the Public Contracts (Scotland) Regulations 2006 which sought to challenge a local authority's competitive tendering procedures. Mark also appeared in a reclaiming motion arising out of \$100 million claim for breach of fiduciary duties relating to oilfields in the Caspian Sea. Mark has also been instructed in commercial actions seeking to enforce restrictive covenants against former directors and to enforce personal guarantees against company directors. He also appeared in a recent Inner House appeal which considered what remedies were available to a disappointed seller of heritable property in the event that the purchaser failed to pay the agreed purchase price.

Mark has recently appeared in a trade mark appeal before the European Court of Justice in Luxembourg.

## Professional Negligence

Mark has represented pursuers and defenders and has acted in a wide range of professional negligence actions.

At present he is instructed in high-value claims against solicitors and financial advisers. Mark has instructions for a number of complex medical negligence actions and has acted in several medical negligence actions where the value of the claim was in excess of £2million.

## Recent Cases

### Selected Commercial Cases

*The Coal Authority v The Pegasus Fire Protection Company Ltd* [2018] CSOH 36      This Commercial Court action, in which I acted for the pursuer, considered the circumstances in which the Coal Authority had a contractual right of indemnity under and in terms of the extra-statutory permit scheme operated by it.

*Burnside v Promontoria (Chestnut) Limited* [2017] CSOH 157  
This Commercial Court action, in which I acted for the pursuer, considered the circumstances in which the common law would imply a contractual term requiring a contractual obligation to be performed within a reasonable period of time. The court also provided guidance on how to determine whether or not such a reasonable period of time had expired.

*The Grange Trust v City of Edinburgh Council* [2017] CSOH 102  
This Ordinary Action in the Court of Session considered the following issues: (i) the circumstances in which one party to a contract had title to bring proceedings to enforce its obligations without the consent of the other parties to the contract; (ii) the meaning and effect of maintenance obligations contained in a Minute of Agreement; and (iii) whether or not a boundary wall adjacent to a public road was part of the road for the purposes of the Roads (Scotland) Act 1984.

*Arjo Wiggins Limited v British Waterways Board* [2017] SAC (Civ) 15  
This appeal to the Sheriff Appeal Court considered the correct interpretation of a Wayleave Agreement and of a Deed of Assignation. The Sheriff Appeal Court also had to consider issues of personal bar.

*AWG Group Ltd v HCP II Properties 101 GP Ltd* [2017] CSOH 69  
In this Commercial Action, in which I acted for the defender, Lord Doherty considered whether or not a commercial landlord was able to proceed with a rent review several years after the relevant rent review date. Lord Doherty also provided general guidance on the circumstances in which a contractual right can be waived.

*AWG Business Centres Ltd v Regus Caledonia Ltd & Another* [2017] CSIH 22  
This reclaiming motion before the First Division of the Inner House considered the correct interpretation to be given to a tenant's repairing obligations in a commercial lease. The First Division required to determine whether or not the tenant was liable for the cost of repairs for inherent defects in a multi-storey car park adjoining the office premises.

*New Ingliston Ltd v City of Edinburgh Council* [2017] CSOH 37  
In this commercial action, in which I acted for the defender, Lord Tyre required to determine the extent and scope of the environmental remedial works that the defender required to carry out to land which had been compulsorily acquired for the tram works but was now surplus to requirements.

*Regent Quay Developments Company Limited v Tyco Fire & Integrated Solutions (UK) Ltd* [2016] CSIH 73  
In this reclaiming motion the Extra Division considered whether or not a tenant had validly exercised a break option in a commercial lease.

*Gyle Shopping Centre General Partners Ltd v Marks & Spencer Plc* [2016] CSIH 19

This appeal before the Extra Division considered the correct interpretation of provisions in a commercial lease regulating the redevelopment of a shopping centre.

*Homebase Ltd v Hammersons (Kirkcaldy) Limited* [2015] CSOH 50

This debate in the Commercial Court considered whether it was permissible, having regard to the particular terms of the Lease, for the landlord to seek information relating to any rent subsidies or reverse premiums prior to considering whether or not to consent to a proposed sub-lease.

*Homebase Ltd v Grantchester Developments (Falkirk) Limited* [2015] CSOH 49

This debate in the Commercial Court considered whether it was permissible, having regard to the particular terms of the Lease, for the landlord to seek information relating to any rent subsidies or reverse premiums prior to considering whether or not to consent to a proposed sub-lease.

*Pangyrus Ltd v OHIM & RSVP Design Limited Case T-257/11*

In this appeal the General Court of the European Court of Justice considered the grounds upon which a Community Trademark could be cancelled on the grounds of bad faith. The General Court also provided guidance on the admissibility of appeals from the Board of Appeal.

*Gyle Shopping Centre General Partners Ltd v Marks & Spencer Plc* [2015] CSOH 14

This proof in the Commercial Court considered the correct interpretation of provisions in a Commercial Lease regulating the redevelopment of the

Shopping Centre and whether or not the tenants had unreasonably withheld their consent to the landlords' proposed redevelopment.

*Axon Well Intervention Products AS v Craig* [2015] CSOH 4

This debate in the Commercial Court considered the circumstances in which a parent company could recover damages on behalf of a subsidiary company; and whether or not a "bad leaver" clause in a shareholders' agreement was a liquidate damages provision.

*Scotts Atlantic Investments Ltd (In Liquidation) v Dryburgh* [2014] CSOH 165

This debate in the Commercial Court considered the meaning and effect of a Deed of Indemnity which had been granted to the original Liquidator by shareholders. In particular, the court considered whether the Deed of Indemnity was personal to the original liquidator, whether it imposed joint and several liability and whether it contained any limitations on liability.

*Sutherland v Bank of Scotland Plc* [2014] CSOH 113; 2014 G.W.D. 25-477

This proof in the Commercial Court considered the circumstances in which a Personal Guarantee granted by a company director in respect of the debts a limited company could be reduced by the court on the grounds of breach of contract, misrepresentation and/or breach of duty to exercise reasonable care.

*Dunfermline B.S. v FM Front Door Ltd* [2011] CSOH 175; 2011 G.W.D. 37-753

This Opinion of Lord Hodge provides guidance on when the terms of a written contract can be varied by the actings of the parties and on the application of the principles of personal bar in such circumstances. Lord Hodge also clarified when it would be appropriate for the court to grant an administration order.

*Johnson & Smart (Projects) Ltd v Sinclair* [2011] CSOH 166; 2011 G.W.D. 33-699

This Opinion of Lord Malcolm considers when the five year prescriptive period commences in contracts for the supply of services. In particular, Lord Malcolm considers when it necessary for an invoice to have been rendered before the prescriptive period can commence.

*Wilmington Trust Co v Rolls Royce Plc* [2011] CSOH 151; 2011 G.W.D. 32-681

In this Commercial Action Lord Hodge reviews the authorities relating to the creation of liens and provides a modern statement of what conditions required to be fulfilled before a lien can be created. Issues of international private law also arose as the contracts in question were subject to the Law of the State of New York.

*Dryburgh v Scotts Media Tax Limited* [2011] CSOH 147; 2011 G.W.D. 31-658

In this Commercial Action Lord Glennie considered the content and scope of the fiduciary duties and common law duties of care that are incumbent upon a company director when implementing tax avoidance schemes. Lord Glennie also considered the issues of common law fraud on creditors and whether or not all breaches of trust were imprescriptible.

*Pocock's Trustee v Skene Investments (Aberdeen) Ltd* 2011 G.W.D. 30-654

This action concerned attempts by a Trustee in Sequestration to reduce certain fraudulent conveyancing transaction which had been entered into by a fraudulent property developer. The main issue was what rights a bona fide third party in possession had in these particular circumstances. Issues of personal bar and mora, taciturnity and acquiescence were also raised.

*Crieff Highland Gathering Ltd v Perth and Kinross Council* 2011 S.L.T. 992

This action concerned a tenant's liability for extraordinary repairs. Lord Pentland considered whether the tenants were in breach of their obligations relating to extraordinary repairs and whether any such breaches were of sufficient materiality to entitle the landlord to terminate the lease.

*Mitchell v Hiscox Underwriting Ltd* 2010 G.W.D. 13-244

In this appeal the Extra Division considered the circumstances in which an insurer could avoid a policy if a material misrepresentation by the assured had induced it to enter into the policy on different terms than would otherwise have been offered.

*Commonwealth Oil & Gas Ltd v Baxter* 2010 SC 156

This Opinion of the First Division is the leading Scottish authority on the nature and content of directors' fiduciary duties. In particular, the First Division gave guidance on the fiduciary duties owed by a non-executive director who had directorships with competing companies.

*McLeod v Rooney* 2010 S.L.T. 499

This Opinion of Lord Glennie is a Scottish authority on what requires to be averred and proved in order to rely on the economic delict of causing loss by unlawful means. Lord Glennie also provided guidance on the application of the rule against suing for reflective loss.

*Bank of Ireland v Morton* 2003 SC 257

In this appeal the First Division considered what duties were owed by a creditor to a company director who had provided a personal guarantee for the company's debts. In particular, the First Division held that the existence of a duty on the creditor to advise the guarantor that a first ranking had not been obtained was not supported by the law of cautionry and the existence of such a duty was inconsistent with the terms and conditions set out in the guarantee.

## **Selected Competition & Public Procurement Cases**

*Advocate General v John Gunn & Sons Ltd* [2018] CSOH 39

This Court of Session action considered the correct approach to adopt when quantifying unlawful State Aid for the purposes of Article 107 of TFEU in circumstances where the admitted State Aid was an unlawful exemption from the Aggregates Levy.

*Dem-Master Demolition Ltd v Renfrewshire Council* [2016] CSOH 150

In this Commercial Action Lord Tyre provided guidance on the circumstances in which it was lawful to disqualify a tenderer that submitted a tender that was not compliant with requirements imposed by the Invitation to Tender.

*Boston Scientific Ltd v Common Service Agency* [2016] CSOH 132

In this Commercial Action Lord Tyre provided guidance on what constituted a manifest error of assessment and whether it was necessary for a tenderer to provide evidence to support the claimed specification of its products. Lord Tyre also provided guidance on when it would be appropriate to make an interim order under regulation 48(2) of the Public Contracts (Scotland) Regulations 2012.

*Johnson & Johnson Medical Limited v Greater Glasgow Health Board* [2016] CSOH 12

This Opinion of Lord Jones provides guidance on how to relevantly aver a challenge under the Public Contracts (Scotland) Regulations 2012, on the circumstances in which an Ineffectiveness Order may be granted and on the operation of the time bar provisions in the Regulations.

*Lightways (Contractors) Limited v Inverclyde Council* [2015] CSOH 169

In this Commercial Action Lord Tyre awarded the first ever Ineffectiveness Order in Scotland as the defenders had awarded a call off contract to a supplier who was not a party to the framework agreement. Lord Tyre also provided guidance on the EU law principle of proportionality.

*Clinical Solutions International Ltd v NHS 24 & Capgemini Plc*[2012] CSOH 10

This Opinion of Lord Hodge provides further guidance on the test to be applied in relation to Regulation 47(10) applications and highlights the requirement, under Regulation 47(6) of the 2006 Regulations, for a disappointed tenderer to notify the contracting authority of its intention to bring proceedings prior to commencement of the litigation.

*Lightways (Contractors) Ltd v North Ayrshire Council* 2008 SLT 690

This Opinion of Lord Bracadale considered the circumstances in which a disappointed tenderer could obtain an interim interdict preventing a public authority from awarding a public contract to a competitor under and in terms of The Public Contracts (Scotland) Regulations 2006.

### **Selected Professional Liability & Disciplinary Cases**

*DK v General Dental Council, unreported, 20th June 2018, Lady Wolfe*

This petition for judicial review considered the date on which the ground of challenge first arose, the correct application of transitional provisions governing the implementation of new regulatory proceedings and whether a warning in respect of a criminal conviction was a disproportionate sanction.

*Carter v General Medical Council* [2017] CSIH

In this appeal to the Inner House of the Court of Session, in which I acted for the GMC, the Extra Division considered whether or not the sanction of erasure was excessive and disproportionate in the particular circumstances of the appellant. The Extra Division also provided guidance on the circumstances when it would be appropriate for the court to substitute a different sanction.

*LM v Nursing & Midwifery Council* [2016] CSIH 86

In this appeal to the Inner House of the Court of Session, the Extra Division considered the circumstances in which it was necessary to adjourn a hearing before proceeding to impose a sanction when the practitioner was not in attendance.

*David Bartos v Scottish Legal Complaints Commission* [2015] CSIH 50

This Inner House appeal considered the competency of hybrid conduct and services complaints and examined whether remittal back to the Commission or the Court substituting its own decision on the merits of the complaint was the appropriate disposal.

*Oliphant v Scottish Legal Complaints Commission* [2014] CSIH 94

This application for leave to appeal to the Inner House considered the procedure which should be followed by the Scottish Legal Complaints Commission when deciding issues of disputed fact at the stage of determining the eligibility of a complaint.

*Stewart & Mclsaac v Scottish Legal Complaints Commission* [2014] CSIH 23

This appeal to the Inner House considered the correct interpretation of rule 4(6) of the 2009 Rules of the SLCC and provided guidance on when the one year time limit for making complaints of inadequate professional services commenced.

*Karus v Scottish Legal Complaints Commission* [2014] CSIH 59; 2014 G.W.D. 24-463

This Inner House appeal considered the circumstances in which it would be appropriate for the Commission to exercise its discretion in the public interest to receive a late complaint.

*University of Glasgow v Sibbald & Baxter* [2013]

This student disciplinary hearing before the University Senate considered a complaint that two students had brought the University into disrepute by making allegedly sexist comments at a debating competition. In addition to disputed issues of fact, legal issues relating to jurisdiction, freedom of expression and of privacy arose.

*Kidd v Scottish Legal Complaints Commission*[2011] CSIH 75; 2012 G.W.D. 1-5

This Opinion of the First Division provides guidance on the content and scope of the duty to give reasons by disciplinary bodies such as the Scottish Legal Complaints Commission.

*Shetland Health Board v Kelly*[2011] CSOH 67; 2011 G.W.D. 15-357

In this Ordinary Action Temporary Judge Reid considered, inter alia, when claims for repayment of monies under the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1989 and 1998 and under common law fraud prescribed.

*Sheldon v Nursing & Midwifery Council*2010 S.L.T. 1195

In this appeal from the Conduct and Competence Committee of the Nursing and Midwifery Council the Second Division considered the adequacy of the reasons provided by the Committee and examined the significance of the Indicative Sanctions Guidance when assessing what sanction should be imposed.

*Graham v Nursing and Midwifery Council*2008 SC 659

In this appeal from the Conduct and Competence Committee of the Nursing and Midwifery Council the Extra Division held that the sanction imposed had been excessive and disproportionate because the Committee had failed to take into account certain relevant and material considerations. In addition, the Extra Division provided guidance on the extent of the written reasons that the Committee was required to provide when considering what sanction to impose.

*Hume v Nursing & Midwifery Council* 2007 SC 644

In this appeal from the Conduct and Competence Committee of the Nursing and Midwifery Council the First Division considered whether it was competent to entertain a statutory appeal under the Nursing and Midwifery Order 2001 when the appeal was not presented within the time limit set by the relevant legislation. The court held that RCS 2.1(1) was applicable and that there was a discretion to relieve the appellant of the consequences of his failure to present his appeal timeously, provided that the court was satisfied that the failure was due to "mistake, oversight or other excusable cause".

*Fairlie v Perth & Kinross Healthcare NHS Trust*2004 SLT 1200

In this action a father sought damages from a health board in respect of alleged negligence by Y, a consultant psychiatrist, in the treatment of his daughter (X. Lord Kingarth held that there was nothing which indicated circumstances in which it could be said that Y came at any stage into a special relationship with the pursuer such that he owed a duty to him as well as to X; and that the appropriate means of redress where mere damage to reputation was caused by a statement or statements was an action of defamation and an action of damages based on a failure to fulfil a common law duty of care, without averment of any relevant consequential personal injury, was not a relevant head of loss.

## **Selected Public Law, Judicial Review & Human Rights Cases**

*Scottish Child Abuse Inquiry*

In this public inquiry I represented the Sisters of Nazareth, a core participant, at all stages of the inquiry.

*Priya Properties Limited v Inverclyde Council* 2017 Hous. L.R.19

This appeal under the Housing (Scotland) Act 1987 against a Demolition Order considered whether it was competent for a local authority to rely upon a general survey of a entire development rather than a specific survey for the property when determining issues of structural stability.

*Sami Ahmed v Secretary of State for the Home Department* [2017] CSIH 63

This reclaiming motion, in which I acted for the claimer, considered whether or not the claimer should be granted permission to appeal from the Upper Tribunal's refusal of his application for leave to remain in the United Kingdom on the basis of his Article 8 rights. In particular, the court required to consider the proportionality of requiring the claimer's wife and children to return to Sudan with him in order to maintain the integrity of the family unit.al to the Inner House of the Court of Session.

*Adil Ali v Secretary of State for the Home Dept* IA/33407/16

This appeal to the First Tier Tribunal ("FTT"), in which I acted for the applicant, related to an application for leave to remain in United Kingdom ("LTR") under and in terms of Paragraph 276ADE(vi) of the

Immigration Rules; failing which on Article 8 grounds outside of the Immigration Rules. The FTT required to consider whether or not there were very significant obstacles to the Applicant's integration in Pakistan.

*Mackay & Others v Scottish Borders Council* 4100287/2017

This application to an Employment Tribunal considered whether or not a local authority had the requisite statutory powers to be able to agree to life time conservation of teachers' salaries or whether this could only be done at a national level.

*Vishal Suri v Secretary of State for the Home Department* [2017] CSIH 48

This reclaiming motion considered the correct approach to the assessment of the proportionality of an interference with Article 8 family life rights, which had been entered into when one of the party's immigration status was precarious. The Extra Division made clear that there was no test of exceptionality. The test was one of proportionality and a claimant need to demonstrate factors which outweighed the public interest in the maintenance of immigration control. However, these factors did not need to be unique or unusual. In addition, the Extra Division provided guidance on how Article 8 claims should be assessed during the second stage consideration outside of the Immigration Rules.

*Ismahan Abdi v Secretary of State for the Home Dept* [2017] CSIH 25

This appeal before the Inner House of the Court of Session considered the correct approach to take to the assessment of the best interests of the child under section 55 of the Borders Citizenship and Immigration Act 2009 when carrying out a "second stage" assessment of the proportionality of an admitted interference with Article 8 rights outside of the Immigration Rules.

*Peter Laverie v The Scottish Ministers* [2017] CSOH 45

This petition for judicial review challenged the lawfulness of a Statutory Instrument which removed the Board of Management of a College of Further Education; and also challenged the Convention compatibility of a number of statutory provisions which imposed automatic lifelong disqualification orders upon the board members who had been removed from office by the impugned Statutory Instrument.

*Ewing v Inverclyde Council* [2016] SC GRE 65

This appeal considered the circumstances in which it was lawful for a local authority to make a Demolition Order under the Housing (Scotland) Act in respect of properties which were structurally unstable. In particular, the court gave guidance on onus of proof, the relevant point in time at which the court was called upon to assess structural stability and on the de novo jurisdiction of the court.

*Susan Dryburgh v Fife Health Board & The General Dental Council*[2016] CSOH 116

This petition for judicial review provided general guidance on the competency of seeking to judicially review a decision made in an employment context and on the applicability of Article 6 of the ECHR to an employer's disciplinary hearings.

*Beggs v Scottish Information Commissioner* [2016] CSIH 23

This appeal to the Inner House considered the scope of the exemptions contained in sections 30(b)(i) and 38(1)(b) of the Freedom of Information (Scotland) Act 2002. The Inner House also provided guidance on the extent of the right of appeal under section 56 of the 2002 Act and on the approach to be adopted by the court when hearing an appeal against a decision of the Information Commissioner.

*Khan v Secretary of State for the Home Department* [2016] CSIH 13

This appeal before the First Division of the Inner House provided guidance on the weight to be attached to the EU nationality of a spouse or partner when considering the proportionality of removing a third country national from the United Kingdom.

*Lardjani v Secretary of State for the Home Department* [2016] CSIH 14

This appeal before the First Division of the Inner House considered the proportionality of removing a third country national from the United Kingdom in circumstances where his family and private life had been established when his immigration status had been precarious. The court gave guidance on the weighty considerations that would be required in order to render such a removal a disproportionate interference with Article 8 rights.

*Irfan Liaquat v Secretary of State for the Home Department* [2015] CSIH 83

This application for leave to appeal to the Inner House considered the correct approach to be adopted



when assessing the proportionality of a Deportation Order, for the purposes of Article 8, when the criminal behaviour which resulted in the Order being made was caused by mental illness which subsequently had been successfully treated.

*Stephen Alibinu v Secretary of State for the Home Dept* [2015] CSOH 155

This petition for judicial review considered whether or not the Secretary of State had correctly taken into account the petitioner's Article 8 rights when considering whether or not his further representations constituted a fresh claim for asylum under and in terms of paragraph 353 of the Immigration Rules.

*Kenneth Muchena v Secretary of State for the Home Dept* [2015] CSOH 108

This petition for judicial review considered the correct 4 stage legal approach to be adopted by the Secretary of State when assessing whether or not to issue a Certificate under section 96(1) of the Nationality, Immigration & Asylum Act 2002.

*Yasin Salama Ibrahim v Secretary of State for the Home Dept* [2015] CSOH 71

This petition for judicial review considered the correct approach to be adopted by the Secretary of State when considering whether or not further submissions advancing a claim for refugee status sur place amounted to a fresh claim for asylum under and in terms of paragraph 353 of the Immigration Rules.

*Taylor Clark Leisure Plc v HMRC* 2015 SLT 281

This Inner House appeal considered whether or not the Court of Session had an inherent common law power to grant an English barrister ad hoc rights of audience.

*Muhammad Irfan Khan v Secretary of State for the Home Department* 2015 SC 583

This reclaiming motion considered whether or not it was necessary to demonstrate "exceptional circumstances" before there could be any disproportionate interference with the Article 8 rights of spouses who had married when their immigration status was precarious.

*Mirza v Secretary of State for the Home Department* 2015 SC 572

This reclaiming motion considered the correct approach to the assessment of Article 8 rights outside of the Immigration Rules when one of the spouses was an EU citizen.

*K v Secretary of State for the Home Department* 2015 SLT 244

This petition for judicial review considered the circumstances in which it was necessary for the Secretary of State to consider an application for leave to remain in the United Kingdom on Article 8 grounds outside of the Immigration Rules.

*MA v Secretary of State for the Home Department* [2014] CSIH 111

This appeal to the Inner House considered the approach to be adopted by the FTT and the UT when assessing the credibility of an asylum seeker who had no documentary evidence to support his claim and who had a reasonable excuse for having no knowledge of the conditions in the country from which his family had originated.

*Tarves Health Limited v Grampian Health Board* 2014 SLT 974

This petition for judicial review provided general guidance on the interpretation of the legislation which enables Health Boards to authorise General Practitioners to dispense prescribed medicines. It also provided guidance on the procedure which required to be followed by Health Boards in order to comply with the rules of natural justice when reviewing such authorisations.

*MN & KY v Secretary of State for the Home Department* [2014] 1 WLR 2064

This appeal to the Supreme Court considered the circumstances in which it was appropriate for the Upper Tribunal to provide general guidance on the use of linguistic analysis reports.

*IA(India) v Secretary of State for the Home Department* [2014] 1 WLR 384

This appeal to the Supreme Court considered what the status in the United Kingdom was of persons who had been granted mandated refugee status by the UNHCR.

*Beggs v Scottish Information Commissioner* [2014] CSIH 10; 2014 GWD 5-113

This appeal to the Inner House considered whether information sought by a convicted prisoner, relating to the facts and circumstances surrounding his offence, was exempt from disclosure under section 34(1) of the Freedom of Information (Scotland) Act 2002; and whether the public interest in disclosing information outweighed the public interest in maintaining the exemption.

*AM(Algeria) v Secretary of State for the Home Department* [2014] CSIH 1; 2014 GWD 4-88

This appeal to the Inner House considered whether it was a disproportionate interference with the appellant's Article 8 rights to expect him to return to Algeria to apply for Entry Clearance.

*Zoumbas v Secretary of State for the Home Department* [2013] 1 WLR 3690; [2014] 1 All ER 638

This appeal to the Supreme Court considered the application of the United Nation's Convention on the Rights of the Child to claims for asylum by refugees who had children.

*MacR v Law Society of Scotland* [2013] CSOH 28

This petition for judicial review challenged the procedural fairness of a lengthy investigation into alleged misconduct on the part of a solicitor and considered whether or not Article 6 of the ECHR applied to complaints of this nature.

*HFD Construction Ltd v Aberdeen City Council* [2013] CSOH 25

This petition for judicial review sought to challenge the Council's decision to redevelop a prime site in Aberdeen on the grounds that it did not comply with the Council's statutory "best value" obligations and contravened EU rules on State Aid. Procedural fairness and common law rationality challenges were also made.

*MS v Secretary of State for the Home Department* [2013] CSIH 52

This reclaiming motion considered the lawfulness of the new Immigration Rules relating to Article 8 and how these new Rules should be taken into account by the Secretary of State when making an Article 8 decision.

*I.W. v Secretary of State for the Home Department* [2013] CSIH 90

This Inner House reclaiming motion considered whether or not the Secretary of State had correctly assessed the risk to failed asylum seeker upon his return to India. It also considered the circumstances in which having to be discrete about political beliefs could give rise to a claim for asylum.

*Nemah Shehadeh v Secretary of State for the Home Department* [2013] CSOH 139

This petition for judicial review challenged the lawfulness of the detention of a failed asylum seeker under the Immigration Act 1971 and sought damages.

*K.P. v Secretary of State for the Home Department* [2012] CSIH 38

The main issue in this reclaiming motion was whether or not the new rule of court 41.59 was ultra vires and if it was ultra vires what was the appropriate common law test for the court to apply when it was considering whether or not to grant leave to appeal from the Upper Tribunal.

*McGeoch v Lord President of the Council* 2011 S.L.T. 633

In this petition for judicial review Lord Tyre held that a convicted prisoner's application for judicial review of the decision of the electoral registration officer refusing his application to have his name included on the register of local government electors, was incompetent where the applicant had failed to avail himself of the statutory remedy in the Representation of the People Act 1983, which afforded an effective means of seeking redress for any failure to respect his right to be registered to vote, and was not deficient in its ability to give effect to any EU law right to which he might be entitled.

*Trustees of the Lithgows Ltd Pension Scheme v Board of the Pension Protection Fund* 2011 S.C. 426

In this appeal by trustees of a multi-employer occupational pension scheme under the Pensions Act 2004 s.217(1) against a decision of the Pension Protection Fund Ombudsman rejecting their grounds of review in respect of a levy raised against them by the Board of the Pension Protection Fund the First Division held that it ought to be dismissed where the trustees sought to act on behalf of a participating employer in the scheme but the rights to seek a review of the amount of a levy, to refer a reviewable matter to the ombudsman and to appeal to the court against the board's determination were vested in the trustees only and they could not act in a representative capacity.

*Miller & Martin v H.M. Advocate*2010 S.C. (U.K.S.C.) 40

This judgment of the UK Supreme Court provides guidance on the meaning and effect of the provisions in the Scotland Act 1998 which govern the legislative competence of the Scottish Parliament. The Supreme Court held that The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 section 45, which increased from 6 months to 12 months the maximum sentence that a sheriff sitting summarily could impose for an offence of driving while disqualified under the Road Traffic Act 1988 s.103(1)(b), was within the legislative competence of the Scottish Parliament.

*Mclnnes v H.M. Advocate*2010 S.C. (U.K.S.C.) 28

In this appeal the Supreme Court held that although the Crown's failure to disclose to an accused material which might have materially weakened its case, or materially strengthened the accused's case, had been incompatible with Article 6(1) of the ECHR, that did not mean that the trial had been unfair. An appeal court would find that a trial had been unfair only if it found that there was a real possibility that the jury would have arrived at a different verdict had the disclosure been made.

*Allison v H.M. Advocate* 2010 S.C. (U.K.S.C.) 19

In this appeal the Supreme Court held that although the Crown's failure to disclose outstanding criminal charges relating to one of its witnesses was incompatible with the accused's rights under Article 6(1) of the ECHR, there had been no miscarriage of justice as there was no real possibility that the jury would have come to a different verdict if it had been aware of them.

*Lloyds Pharmacy Ltd v National Appeal Panel*2010 S.C. 721

In this reclaiming motion the First Division held that The Lord Ordinary had correctly concluded that the National Appeal Panel had misdirected itself in failing to address the essential contention before it in an appeal against a health board's refusal of a pharmacy operator's application for inclusion in the pharmaceutical list, namely that the existing pharmaceutical provision was inadequate due to the absence of pharmaceutical services at a new health centre.

*Absalom v Governor, H.M.P. Kilmarnock*[2010] GWD 27-519

In this petition for judicial review Lord Tyre held that the refusal by a prison governor of a foreign national prisoner's application for a transfer to the open prison estate was irrational and fell to be reduced where it seemed to be based on an assumption that, in the absence of positive indication from the UKBA that a prisoner would not be deported on release there was a risk that such a prisoner would abscond, and the governor did not have regard to the prisoner's individual circumstances.

*Lloyds Pharmacy Ltd, Petitioners*[2010] GWD 27-521

In this petition for judicial review Lord Pentland held that a health board had not erred in law in refusing a pharmacy's application for a minor relocation where it had properly understood the test it had to apply in determining the application and was entitled to conclude that the rank order of pharmacies in proximity to the new health centre would change if the application was granted, thus there would be an appreciable effect on the applicant and other contractors by affecting their levels of trade.

*East Renfrewshire Council v City of Glasgow Council*2009 SC 197

In this ordinary action Lord Penrose held that the Education (Scotland) Act 1980 section 23 entitled a local authority to recover the cost of additional support services provided by them to children ordinarily resident in other education authorities' areas, notwithstanding that the children were placed in response to parental choice.

*Somerville v Scottish Ministers*[2007] 1 WLR 2734

This House of Lords case considered the relationship between the Scotland Act 1998 and the Human Rights Act 1998 and the circumstances in which damages would be payable for a breach of Convention rights. It was held that A claim for damages as just satisfaction in respect of an act by a member of the Scottish Executive which was outside devolved competence because it was incompatible with a Convention right was not subject to the provisions of the Human Rights Act 1998 section 7(5).

*A v Scottish Ministers*2008 SLT 412

This Opinion of Lord Turnbull considered whether the legislation relating to the supervision and monitoring of convicted sex offenders was compatible with Article 8 of the ECHR.

*Wilson v Aberdeen City Council*2008 SC 231

In this appeal the Extra Division held that a local authority's post-1994 policy requiring taxi operators to provide vehicles with wheelchair access was reasonable and lawful, as was its decision to temporarily relax that policy in favour of pre-1994 licence-holders for commercial reasons.

*Infant and Dietetic Foods Association, Petitioners*2008 SLT 137

In the course of proceedings for judicial review of a decision by the Scottish Ministers to make and lay before Parliament the Infant Formula and Follow-On Formula (Scotland) Regulations 2007 (SSI 2007/549) Lord Macphail considered when it would be appropriate to suspend on an interim basis the commencement of a statutory instrument.

*United Co-operative Ltd v National Appeal Panel*2007 SLT 831

In this petition for judicial review Lord Glennie provided guidance on the application of the plea of mora, taciturnity and acquiescence in the context of judicial review and on the content of the duty to give reasons incumbent upon bodies such as the National Appeal Panel.

*S v Criminal Injuries Compensation Appeal Panel*2007 SC 748

This reclaiming motion before the Extra Division considered whether the "same roof" rule in paragraph 7(b) of the 1996 Criminal Injuries Compensation Scheme was compatible with Article 6 and Protocol 1 Article 1 of the ECHR, when taken with Article 14. The Extra Division also considered the circumstances in which the Human Rights Act 1998 could have retrospective effect.

*Wiles v Bothwell Castle Golf Club*2005 SLT 785

Three members of a golf club sought judicial review of a decision of the club committee terminating their membership of the club because they had objected to a planning application made by the club. Lord Glennie held that the acts and conduct of the petitioners, in themselves, were entirely unobjectionable, that they only became the focus of objection from the committee because the proposal they had taken exception to had come from the respondents, and that this was insufficient to render their conduct and acts susceptible to the committee's disciplinary jurisdiction.

**Other Reported Public Law Cases**

*Scottish National Party v STV*1998 SLT 1395 (OH)

*Zhu v SSHD*1998 SLT 1251

*Francois v SSHD*1999 SLT 79 (OH)

*Asif v SSHD*1999 SLT 890 (OH)

*Singh v SSHD*2000 SC 219, 2000 SLT 243 (IH)

*Mills v H.M.A. (No.2)*2001 SLT 1359 (IH)

*Ahmed v SSHD*2001 SC 705 (OH)

*Asif v SSHD*2002 SC 182, 2002 SLT 307 (IH)

*Saha v SSHD*2003 SC 242 (IH)

*Manz v SSHD*2003 SLT 1278 (OH)

*Khairandish v SSHD*2003 SLT 1358 (OH)

*Singh v SSHD*2004 SC 416, 2004 SLT 1058 (IH)

*Musaj v SSHD*2004 SLT 623 (OH)

*Hider v SSHD*2004 SLT 145 (IH)

*Hoseini v SSHD*2005 SLT 550 (IH)

*Johnson v SSHD*2005 SLT 393 (OH)

*Temel v SSHD2005 SLT 204 (OH)*

*Koca v SSHD2005 SC 487, 2005 SLT 838 (IH)*

*Hussein v SSHD2005 SC 509 (IH)*

*DD v SSHD2005 SC 415 (IH)*

*R v Highland Council2007 SLT 513*

*YKM v Secretary of State for the Home Department2007 SC 796*

*CW v Secretary of State for the Home Department 2008 SC 105*

*M v Secretary of State for the Home Department2008 SC 105*

*K v Secretary of State for the Home Department2009 SLT 525*

*N v Secretary of State for the Home Department2009 SLT 557*

*TR(Afghanistan) v Secretary of State for the Home Department2010 S.C. 205*

*SMF(Iran) v Secretary of State for the Home Department 2010 S.C. 279*

*TP(Jamaica) v Secretary of State for the Home Department[2009] GWD 10-163*

*FH(AP) v Secretary of State for the Home Department2010 S.C. 239*

*MAS(Palestine) v Secretary of State for the Home Department[2009] GWD 15-240*

*DBNBK v Secretary of State for the Home Department2010 S.C. 230*

*AAH(Sudan) v Secretary of State for the Home Department[2009] GWD 20-331*

*AA(AP) v Secretary of State for the Home Department[2009] GWD 34-585*

*K(DRC) v Secretary of State for the Home Department[2009] GWD 31-522*

*ME(Iran) v Secretary of State for the Home Department[2009] GWD 35-600*

*MB(Iran) v Secretary of State for the Home Department[2009] GWD 28-455*

*P v The Advocate General[2009] GWD 29-461*

*JBM v Secretary of State for the Home Department[2009] GWD 27-439*

*DKN v Secretary of State for the Home Department[2009] GWD 29-470*

*SS(Iran) v Secretary of State for the Home Department[2010] GWD 28-58*

*JS(Jamaica) v Secretary of State for the Home Department[2010] GWD 26-504*

*HA(Afghanistan) v Secretary of State for the Home Department2010 S.C. 457*

*RA(Pakistan) v Secretary of State for the Home Department[2010] GWD 15-296*

*AAS(Zimbabwe) v Secretary of State for the Home Department2010 S.C. 383*

*R v Secretary of State for the Home Dept2010 S.L.T. 1251*

*Guyen v Secretary of State for the Home Dept2010 S.C. 555*

*S v Secretary of State for the Home Dept 2011 S.L.T. 297*

*CB v Secretary of State for the Home Dept 2011 S.C. 248*

*AAS(Somalia) v Secretary of State for the Home Dept 2011 S.L.T. 1058*

*EY(Turkey) v Secretary of State for the Home Dept 2011 S.C. 388*

*JMC(DRC) v Secretary of State for the Home Dept 2011 G.W.D. 7-188*

*IA(Iran) v Secretary of State for the Home Dept 2011 S.C. 625*

*BM(Malawi) v Secretary of State for the Home Dept 2011 S.C. 726*

*MAS(Somalia) v Secretary of State for the Home Dept 2011 G.W.D. 20-473*

*BMAS(Somalia) v Secretary of State for the Home Dept [2011] G.W.D. 26-591*

*VH(Zimbabwe) v Secretary of State for the Home Dept [2011] G.W.D. 34-711*

### **Advocates Courts & Tribunals**

The European Court of Justice, Luxembourg, The Judicial Committee of the House of Lords; The Privy Council, The Supreme Court of the United Kingdom; The Inner & Outer Houses of the Court of Session; The High Court of Justiciary; The Sheriff Appeal Court, The Sheriff Court; Fatal Accident Inquiries (Sheriff Court); Merchant Shipping Inquiries; The Employment Appeal Tribunal; Employment Tribunals; The Transport Tribunal; Planning Inquiries; Social Security Commissioners Hearings; The Traffic Commissioner; The Asylum & Immigration Tribunal; The NHS Tribunal; The Competition Appeal Tribunal (London); Planning Inquiries; the First Tier Tribunal; the Upper Tribunal.

### **Advocates Appointments & Memberships**

2000 to 2012: Standing Counsel to the Secretary of State for the Home Department.

2013 to date: Legal Chairman of Police Appeal Tribunal.

2013 to date: visiting lecturer to the Institute of Judicial & Legal Studies, Port Louis, Mauritius.

### **Directories**

#### **LEGAL 500**

#### **Civil liberties, human rights, public inquiries, and public and administrative law**

Ranked: Tier 1 'A very pragmatic, user-friendly and approachable silk.'

#### **Commercial Litigation**

Ranked: Tier 1 'He is congenial, robust and incisive.'

### **CHAMBERS DIRECTORY**

#### **Scotland (Bar), Administrative & Public Law**

Band 1

#### **Scotland (Bar), Immigration**

Band 1

#### **Scotland (Bar), Professional Discipline**

Band 1

**Scotland (Bar), Commercial Dispute Resolution**

Band 2

**Scotland (Bar), Public Procurement**

Band 2

**Scotland (Bar), Civil Liberties & Human Rights**

Band 3