

Alastair Duncan QC

Year of Call: 1999 Year of Silk: 2012

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Professional Career to date

Devil Masters: Derek A. Ogg QC, Andrew Smith, QC.

2012: Silk

2006: Appointed Standing Junior Counsel to the Scottish Government

1999: Admitted to the Faculty of Advocates

Education & Professional Qualifications

LLM University of Glasgow (1994)

LLB (Hons) University of Glasgow (1991)

Areas of Expertise

- Commercial Contracts
- Professional Liability
- Public Law, Judicial Review and Human Rights
- Clinical Liability

Professional Experience

Alastair has been involved in a wide range of commercial litigation. Cases in which Alastair regularly acts and advises include commercial contracts, IT disputes, banking, partnership disputes and sports law. Alastair is regularly instructed on behalf of banks and other lenders in the context of high-value disputes. He has acted and continues to act on behalf of solicitors involved in partnership disputes. As regards sports law he has acted for/against various football clubs and professional footballers and agents in relation to a diverse range of disputes including those of a commercial or regulatory nature.

Alastair has a particular interest in professional liability and discipline, and he regularly acts on behalf of solicitors, counsel and their professional indemnity insurers. He is also frequently instructed to act for, or sometimes to pursue, a wide range of professional people including surveyors, architects, engineers and financial professionals. Alastair has an interest in medical negligence and is regularly instructed to act on behalf of and against clinicians.

Alastair has acted and advised in respect of proceedings concerning the following regulatory bodies: the Law Society of Scotland, SLCC, the Faculty of Advocates, the General Medical Council, the General Dental Council, ICAS, the Professional Standards Authority for Health and Social Care, the Nursing and Midwifery Council and the University of Glasgow. He has conducted Court of Session proceedings in relation to disciplinary cases, and has represented professional bodies at disciplinary hearings and he has also acted on behalf of those facing such proceedings.

Throughout his career, Alastair has regularly received instructions in public and administrative law cases. He was a Standing Junior to the Scottish Government until he took silk in 2012. He has

continued to act for (and against) the Scottish Government since then. Alastair has acted for and advised various departments of the Scottish Government in relation to judicial review, statutory appeals and other administrative proceedings. Alastair also has experience of acting for and against local authorities. He has represented various charitable and religious bodies in actions for damages in relation to historic child abuse.

Recent Cases

Professional liability

Heather Capital Ltd (in liquidation) v Levy & McRae [2016] CSOH 107 (breach of trust; prescription)

Professional Standards for Health & Social Care v General Dental Council [2016] CSIH 58 (disciplinary appeal; under-prosecution)

NRAM v Steel 2016 SLT 285 (solicitors' negligence; duty of care to third party)

Clark v GGHB[2016] CSOH 24 (professional negligence; appearance for counsel in respect of comments made by judge about conduct of case)

*Karus v Scottish Legal Complaints Commission*2014 S.C. 754 (disciplinary appeal; time limits)

McManus v Citylink Development [2015] CSOH 178 (professional negligence; engineers; contaminated land)

Northern Rock plc v Bell & Scott 2015 PNLR 16 (professional negligence; solicitors; duties to third parties)

*Cheshire Mortgage Corpn v Grandison*2013 SC 160 (professional negligence; solicitors; breach of warranty of authority)

Singh v Napier [2012] CSIH 54 (senior counsel sued for breach of race relations legislation in provision of advice and conduct of case)

Tods Murray v Arakin [2010] CSOH 90; [2012] CSOH 26; [2012] CSIH 85 (professional negligence; solicitors; abuse of process)

Kirkton Investments Ltd v VMH LLP[2012] PNLR 11 (professional negligence; solicitors; loss of chance; SAAMCO)

Macduff Shellfish Ltd v Masson & Glennie [2007] CSOH 155 (professional negligence; insurance brokers)

Hay v Gourlay McBain [2009] PNLR 7 (professional negligence; solicitors; relevancy of losses sought; SAAMCO)

McCrinkle Group Ltd v Law Society of Scotland(*professional discipline; reasons*) [2012] CSOH 165

*Murnin v Scottish Legal Complaints Commission*2013 SC 97 (professional discipline; time bar)

Karus v Scottish Legal Complaints Commission [2013] XA63/12 (professional discipline; leave to appeal)

Gray v Professional Conduct Committee of the Nursing & Midwifery Council 2009 SLT 779 (discipline; delay; article 6 of ECHR; appeal against conviction and sentence)

Law Society v Campbell Riddell Breeze Paterson [2007] CSIH 1 (discipline; inadequate service; appeal to Court of Session)

R v [name withheld] (professional negligence; solicitors; loss of chance; failure to follow instruction and breach of contract; case abandoned October 2013 after one week of evidence)

J v [name withheld](professional negligence; solicitors; extremely high value; SAAMCO; loss of chance; case abandoned April 2013 after one week of evidence)

Hall v [name withheld] (solicitors' negligence; duty of care; causation; pursuers abandoned after 4 days of evidence)

Platform Home Loans v [name withheld] [case abandoned] (professional negligence; solicitors; test case; liability of solicitor for losses including diminution to value of property caused by negligent overvaluation of properties by surveyor; strict liability; SAAMCO)

E v [name withheld] [case abandoned by pursuer] (senior counsel sued for alleged defective representation; immunity from suit; causation)

P v [name withheld] [case settled] (counsel sued in respect of conduct of judicial review; title to sue)

Scottish Courage v Barr Brady [proceeded to proof in December 2010 & pursuer abandoned] (surveyor's negligence; reliance)

K v [names withheld][case settled] (professional negligence; engineers; piling operation)

P v [names withheld](professional negligence; solicitors; counsel; whether litigation negligently conducted; case ongoing; proof January 2014)

WJ v [name withheld](professional negligence; solcitors; whether litigation negligently conducted; case ongoing; proof January 2014)

Dow v William Duncan(professional negligence; auditors; case ongoing; proof December 2013)

FAI into the death of Declan Hainey September 2014 (death of child whose mother was heroin addict)

McDonald v Tayside HB [settled September 2013] (medical negligence; catastrophic injuries to child following starvation of oxygen)

P v Grampian HB[settled December 2012] (medical negligence; fatal claim; duty to supervise patient with known history of mental health difficulties)

Cowie v Grampian NHS[ongoing FAI and damages action] (death of mother following delivery of child)

Brian Welsh v [name withheld] [action resolved after proof] (medical negligence; professional footballer)

Robertson v Tayside Health Board [case ongoing] (medical negligence; foetal valproate syndrome)

McManus v [names withheld](contaminated land; engineers' negligence; class action; case ongoing)

N v [name withheld](contaminated land; case settled)

Various opinions to Scottish and English professional indemnity insurers in relation to claims against solicitors.

Advice to RICS on single survey legislation

Advice to GMC

Nursing & Midwifery Council v [name withheld] (prosecution of manager of nursing home; serious neglect of elderly and infirm residents)

ICAS v [name withheld] (defence of chartered accountant accused of professional misconduct)

Various cases for and against Law Society of Scotland in relation to appointments of Judicial Factor.

Public Law, Judicial Review and Human Rights

Various opinions and advice for local authority in respect of State Aid and vires implications of transaction

McCraith v Scottish Ministers [2016] CSOH 40 (judicial review; compensation for wrongful conviction)

Congregatation of Poor Sisters of Nazareth v Scottish Ministers 2015 SLT 445 (judicial review; inquiries; bias)

Dinnell v Scottish Ministers 2015 SC 429 (judicial review; compensation for wrongful conviction; reasons)

Main v Scottish Ministers [2015] CSIH 41 (human rights; notification of convictions)

S v L 2013 SC (UKSC) 20 (human rights; devolution issue; adoption)

Uprichard v Fife Council [2013] UKSC 21 (planning; reasons)

Scotch Whisky Association 2013 SLT 776 (judicial review; challenge to alcohol minimum pricing legislation)

Davies v Scottish Commission Regulation of Care 2013 SLT 577 (challenge to interpretation of legislation)

Packard, Pet'r 2011 CSOH 93 (judicial review; planning; Windfarms; bias)

G. v Argyll & Bute Council 2008 SLT 541 (education; placing request; judicial review)

S. v Argyll & Bute Council 2006 SLT 970 (education; additional support for learning; statutory appeal)

Potter v Scottish Prison Service 2010 SLT 779 (judicial review; human rights; prisons)

Gherhardt v HM Advocate 2010 JC 208 208 (extradition; statutory interpretation)

H v Lord Advocate 2011 SCL 978 (extradition; human rights; acting as amicus curiaa)

Vattenfall Wind Farm Ltd v Scottish Ministers 2009 SC 444 (planning appeal; statutory interpretation)

Edinburgh City Council, Pet'r [2010] Fam. L.R. 92 (devolution minute; article 8; statutory interpretation)

Various devolution issues

Various opinions and advice to Scottish and local Government

Commercial Contracts

South Lanarkshire Council v Aviva [2016] CSOH 83 (performance bond)

South Lanarkshire Council v Coface [2016] CSIH 15 (performance bond)

Hoe International v Anderson 2015 SC 506 (reclaiming motion; service of summons)

Sports Direct International plc v Rangers International Football Club plc unreported (interdict; breach of confidence)

NHS 24 v Cap Gemini [2015] CSOH 54 (construction of IT contract; obvious errors; rectification)

Nixon v Livingston Football Club [2015] CSOH 43 (directors' loans to football club; construction of terms)

Royal Bank of Scotland v Carlyle [2015] UKSC 13

Royal Bank of Scotland v Carlyle [2013] CSIH 75 (formation of contract; collateral warranty)

Dyce v Morisons [2013] CSOH 155 (partnership; entitlement to interest; compound interest)

G4S v Clydesdale Bank [2010] CSOH 133 (commercial contract/banking dispute; high value)

Pelagic v Lovie Construction [2010] CSOH 145

Royal Bank of Scotland v Haughey
[2008] CSOH 142 (banking; action for repayment of loan; various legal and factual objections to the action including allegations of fraud and forgery)

Various high profile actions [settled and/or ongoing] seeking repayment of borrowings

Bell & Scott v Kaye [2009] CSOH 51; [2009] CSOH 111 (partnership dispute; restrictive covenant; interpretation; proof of breach)

Various partnership disputes [settled or ongoing]

JL Sports Management v [name withheld] [action resolved] (dispute between agent and international professional footballer; FIFA regulations; interpretation of contract)

Advice to manager and leading football club on possible proceedings against UEFA

Various cases, opinions and advice on interpretation of commercial contracts

Other notable cases

Sheridan v News Group Newspapers (defamation; verdict based on perjured evidence) 2016 SLT 941

B. v Murray 2008 SC (HL) 146 (prescription & limitation; historic child abuse)

Shirley McKie v Scottish Ministers

(action of damages by former police officer in respect of allegations of deliberate and malicious conduct of forensic investigators)

Advocates Courts & Tribunals

All levels of the Scottish civil courts, including the House of Lords and Supreme Court; High Court of Justiciary, including the appeal court; Various disciplinary hearings before professional bodies.

Advocates Appointments & Memberships

2012: Silk

2006 (to date): Standing Junior to the Scottish Government

Directories

Various Chambers UK and Legal 500 recommendations