

## Garry Borland QC

Year of Call: 2000 Year of Silk: 2014

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### Professional Career to date

2014: appointed silk.

2014: called to the English Bar (Middle Temple). Practising member of 4 New Square, Lincoln's Inn, London.

2000: admitted to the Faculty of Advocates.

1995-1999: solicitor in private practice.

### Education & Professional Qualifications

Member of the Faculty of Advocates.

Barrister, England.

BCL, Oxford University - First Class (Pirie-Reid scholar).

LLB (Hons), Glasgow University - First Class (J Bennett Miller Prize winner in senior honours).

### Areas of Expertise

- Construction and Engineering
- Commercial Property
- Commercial Contracts
- Company, Corporate Finance and Tax
- Insolvency
- Professional Liability

### Professional Experience

#### Professional experience

Garry Borland QC specialises in commercial law, including disputes relating to commercial contracts, commercial property, company law and insolvency, construction and engineering, and energy.

Garry is rated by Chambers UK Bar directory as a Band 1 silk for commercial litigation; for construction; and also for restructuring and insolvency work. He is the only Scottish silk rated by Who's Who Legal for company work. Chambers has described him as "Super bright"; "One of the most technically gifted advocates around"; and "hard to beat for cases that need a big brain". "His eye for detail and clarity of delivery are superb"; "On his feet, he is exceptionally good"; "a standout advocate"; "he has a speed and accuracy of analysis that few can match"; "an excellent strategist"; "unrivalled in his ability to immerse himself in the complexity of cases?"; "a very smart lawyer"; and "renowned for his

depth of analysis, his grasp of complex technical issues and his attention to detail". Chambers has said that he is "a very gifted oral advocate" whose style in court is "very forceful", but also "very measured". He has also been said to be a "first class advocate; "His authoritative and precise advocacy consistently impresses judges"; and "He has the respect of the court." Chambers most recently described him as "terrific"; "incredibly bright and brilliant on his feet"; "very effective in court"; "utterly unflappable"; and an "absolute go-to for senior instructions".

Garry is one of just a few Scottish counsel who have featured in the review of the UK Bar in Who's Who Legal where he has been described as "very much the star silk". The 2019 edition described him as "an outstanding silk". In the 2020 edition, he was said to be "an outstanding advocate".

Clients Garry has acted for include: ABB, Aggreko, Aker, AMEC, Andritz, Balfour Beatty, Barclays Bank, Bilfinger Berger, the BMA, Bouygues, BP, Cairn Energy, Carillion, Carlsberg/Heineken, ConocoPhillips, DNB, Ferrovial, Galliford Try, Grant Thornton, Hochtief, Iberdrola, Kier, KPMG, Laing O'Rourke, Lend Lease, Lloyds Bank, Martin Currie, Macquarie Bank, Sir Robert McAlpine, Morgan Sindall, Ryder System, Ryder Cup Europe, Scottish Power, SSE, Scottish Widows, Shepherd Construction, Spie Matthew Hall, Stora Enso, Tesco and Va Tech Wabag.

### **Commercial litigation**

Garry is rated by Chambers UK Bar directory as a Band 1 silk for commercial litigation.

Garry has a considerable depth of experience in commercial litigation. He has advised and acted in disputes arising from numerous sectors of commerce, including those involving banking, commercial property, energy (including oil and gas), financial services, insurance, international sale of goods, and transport.

In addition, Garry acted in the \$4 billion civil claim by the Pan Am liquidation trust and hull underwriters arising out of the destruction of the aircraft in the Lockerbie bombing. This is the biggest financial claim ever made in the Scottish courts.

### **Construction and engineering**

Garry has acknowledged expertise in this area, and has acted for a number of high-profile employers, contractors, sub-contractors, construction professionals, and funders. Chambers UK Bar directory has described him as "the leading QC in construction in Scotland".

He has acted in relation to a very wide variety of construction related claims, including disputes regarding payment, extensions of time, disruption, and professional negligence. Chambers says that Garry has "vast experience" in this area.

Since calling, Garry has appeared in a number of the leading construction cases in Scotland.

Garry is rated by Chambers UK Bar directory as a Band 1 silk for construction matters. He is also rated as a leading silk for construction work by the UK Bar section of Who's Who Legal.

### **Company law and insolvency**

Garry's practice in this area encompasses advisory and litigation work.

Chambers UK Bar directory identifies Garry as a Band 1 silk for restructuring and insolvency work. He is the only Scottish silk rated for company work in the UK Bar section of Who's Who Legal. Garry's practice covers areas such as acquisitions and disposals of companies, shareholder disputes (particularly unfair prejudice disputes; and also warranty claims), corporate and capital reorganisations, members' and creditors' schemes of arrangement, and capital reductions.

Garry was instructed as sole counsel acting for Iberdrola SA in relation to its £12 billion takeover of Scottish Power plc. Garry also acted for Carlsberg/Heineken in relation to their £8 billion takeover of

Scottish & Newcastle plc.

He was also instructed for a syndicate of international banks in relation to the restructuring of \$3.8 billion of debt facilities of Premier Oil plc which was effected by schemes of arrangement in 2017 and 2020.

In 2021, Garry acted for Aggreko plc in relation to the scheme of arrangement by means of which the £2.2 billion takeover of the company was effected.

Garry also acted for the respondent clubs in their successful defence of the unfair prejudice proceedings raised by Hearts and Partick Thistle arising out of the ending of the 2019/2020 Scottish football season due to Covid-19.

He appeared in the landmark case of Martin Currie Ltd, petitioner, in which the court identified the modern approach to applications seeking confirmation of the cancellation of a share premium account.

He also has extensive experience in the field of corporate insolvency. Garry acted for the supervisors of the CVA in the court proceedings concerning the House of Fraser CVA.

Garry was also a standing junior counsel in Scotland for Her Majesty's Revenue and Customs from 2009 to 2012.

## **Recent Cases**

### **Commercial law**

*Tor Corporate AS v China National Star Petroleum Corporation* 2001 SC 314 (proper approach to security required for release of arrestment of an oil rig)

*Cameron (Scotland) Ltd v Melville Dundas Ltd* 2001 SCLR 691 (contractual interpretation issues)

*Stiell Facilities Ltd v Sir Robert McAlpine Ltd* 2001 SLT 1229 (title to sue issues in the context of arrestments on the dependence)

*Barry D Trentham Ltd v Lawfield Investments Ltd* 2002 SC 410 (effect of ECHR on inhibitions on the dependence)

*McLaren Murdoch and Hamilton Ltd v The Abercromby Motor Group Ltd* 2003 SCLR 323 (leading Scottish case on legal "black hole"/Panatown issues)

*Farrans Construction Ltd v RMC Ready Mix Concrete (Scotland) Ltd*,  
27th February 2004 (dispute relating to supply of materials to a large tunnelling project)

*E&J Glasgow Ltd v UGC Estates Ltd* [2005] CSOH 63 (contractual interpretation of development agreement; contractual waiver; Royal Brompton issues)

*Martin Currie Ltd, Petitioner* 2008 SLT 57 (approach to applications seeking confirmation of the cancellation of a share premium account)

*R&D Construction Group Ltd v Hallam Land Management Ltd*  
[2009] CSOH 128 & 2011 SC 286 (construction of land purchase contract and option agreement; enforceability of agreements to agree)

*Baillie Estates Ltd v Du Pont (UK) Ltd*, 2010 SCLR 192 (correct approach to formation of a contract)

*McMullen Group Holdings Ltd v Harwood*, [2011] CSOH 132 (proper construction of share purchase agreement)

*Credential Jersey Ltd v DLA Piper Scotland LLP*

[2012] CSOH 96 (applicability, or otherwise, of the no reflective loss principle to a claim by holders of units in a unit trust)

*Russel Properties (Europe) Ltd v Dundas Heritable Ltd and Tesco Stores Ltd*, [2012] CSOH 175 (enforcement of property title conditions)

*Secretary of State for Defence v Turner Estate Solutions Ltd*, [2014] EWHC 244 (TCC) (serious irregularity challenge to an arbitration award pursuant to the Arbitration Act 1996)

*Scanmudring AS v James Fisher MFE Ltd (No.1)* [2017] CSOH 91 (variation of a dredging contract)

*Scanmudring AS v James Fisher MFE Ltd (No. 2)* [2018] CSOH 16 (payment of hire charges under a dredging contract)

*David MacBrayne Ltd v ATOS IT Services UK Ltd* [2018] CSOH 32 (wide-ranging dispute re failure to deliver a major IT system)

*Scanmudring AS v James Fisher MFE Ltd* 2019 SLT 295 (successfully defended appeal proceedings)

### **Construction and engineering**

*John Doyle Construction Ltd v Laing Management (Scotland) Ltd*

[2002] BLR 393 and [2004] BLR 295 / 2004 SC 713 (leading Scottish case on global claims)

*Vaughan Engineering Ltd v Hinkins and Frewin Ltd* 2003 SLT 428 (scope of potential challenge to adjudicators' decisions)

*Barr Ltd v Law Mining Ltd* 2003 SLT 488 (scope of potential challenge to adjudicators' decisions)

*Deko Scotland Ltd v Edinburgh Royal Joint Venture* 2003 SLT 727 (nature of adjudication process)

*City Inn Ltd v Shepherd Construction Ltd* 2003 SLT 885 (Bristol case) (notice provisions relative to extension of time claims)

*Costain Ltd v Strathclyde Builders Ltd* 2004 SLT 102 (leading Scottish case on natural justice issues relative to adjudicators' decisions)

*APC Ltd (in receivership) v Amey Construction Ltd and others*

(the M6 Joint Venture), 23rd July 2004 (multi-million pound dispute arising from an earthworks sub-contract on a major roads project; contractual interpretation issues)

*Emcor Drake & Scull Ltd v Edinburgh Royal Joint Venture and others*

2005 SLT 1233 (existence, or otherwise, of a contractual warranty in the context of a major claim arising out of construction of the new Edinburgh Royal Infirmary)

*APC Ltd (in receivership) v Amey Construction Ltd and others (the M6 Joint Venture) (No 2)*

[2005] CSOH 147 (proper measure of damages for a failure to complete works; degree of specification required for a claim of that type)

*Royal Insurance (UK) Ltd v AMEC Construction Ltd* [2005] CSOH 162 (legal "black hole"/Panatown issues)

*City Inn Ltd v Shepherd Construction Ltd*

[2006] CSOH 94 (Glasgow case) (notice provisions relative to extension of time claims; analysis of waiver, acquiescence and personal bar in relation thereto)

*City Inn Ltd v Shepherd Construction Ltd* [2008] BLR 269 (Bristol case) (leading Scottish case on extension of time claims)

*Royal Insurance (UK) Ltd v Amec Construction Ltd* 2008 SC 201 (title to sue issues in the context of bare trust arrangements)

*Spiersbridge Property Developments Ltd v Muir Construction Ltd* 2008 SCLR 362 (right of contractor to recover bond monies obtained by the employer)

*Robertson Construction Central Ltd v Glasgow Metro LLP* [2009] CSOH 71 & 71A (proper construction of minute of agreement varying a building contract)

*City Inn Ltd v Shepherd Construction Ltd* [2010] BLR 473 (leading Scottish case on extension of time claims in construction disputes (reclaiming motion))

*W H Malcolm Ltd, petitioner* [2010] CSOH 152 (jurisdictional challenges to construction adjudicators; proper construction of TeCSA Rules)

*Morgan Utilities Ltd v Scottish Water Solutions Ltd* [2011] CSOH 112 (dispute regarding formation of major water infrastructure contract)

*Charles Henshaw & Sons Ltd v Stewart & Shiels Ltd*, [2014] CSIH 55 (appellate court consideration of enforcement of adjudicators' decisions)

*Martifer UK Ltd v Lend Lease Construction (EMEA) Ltd* [2015] CSOH 81 (status of documents touching on programming issues)

*NKT Cables A/S v SP Power Systems Ltd* [2017] CSOH 38 (failure of adjudicator to consider defences)

*Oil States Industries (UK) Ltd v Lagan Building Contractors Ltd* [2018] CSOH 22 (instruction of contractual variations)

### **Advocates Courts & Tribunals**

Court of Session (Inner and Outer House); Sheriff Court; arbitration; adjudication; public inquiries; fatal accident inquiries; mediation.

### **Advocates Appointments & Memberships**

2013: member of the Scottish Law Commission advisory group on third party rights in contracts

2011: member of Scottish Law Commission advisory group on formation of contracts

2010: member of Scottish Law Commission advisory group on interpretation of contracts

2009-2012: standing junior counsel in Scotland for Her Majesty's Revenue and Customs

### **Publications**

*Fault in the Change of Position Defence* 2006 JR 89

*Duty of Care: Journey's End?* 2000 SLPQ 423

*Contributor to Employment Tribunal Practice in Scotland*, Leslie, 2nd edn, 1998 (on company and insolvency aspects)

*Contractual Structures and Duty of Care: An Alternative Analysis*, 1997 SLT (News) 232

*Change of Position in Scots Law*, 1996 SLT (News) 139

*Remoteness of Loss in Contract*, 1995 SLT (News) 239

### **Directories**

## **Commercial litigation**

Garry is rated by Chambers UK Bar directory as a Band 1 silk for commercial litigation. Chambers has described Garry as a "standout advocate" who is "renowned for his depth of analysis, his grasp of complex technical issues and his attention to detail", as well as being "an excellent strategist". It also says of him that, "When it comes to thoroughness, he is unrivalled in his willingness to immerse himself in the complexity of cases." Garry has, it is noted, "real clarity of thought and precision of delivery".

Chambers has described Garry as "one of the most technically gifted advocates around. His eye for detail and his clarity of delivery are superb." It also stated that, "He is renowned for his knowledge and attention to detail", and is "Meticulous in preparing for cases, court appearances and meetings. He is also user-friendly and flexible."

It has also been said of Garry that, "His thoroughness is exceptional. On his feet, he is exceptionally good, and always well prepared." Chambers said, "He has an ability to immerse himself in the detail of large cases, which makes him a great choice for cases of particular complexity."

Previous editions of Chambers have said that he is possessed of "a fantastic intellect and a commercial mindset", and has "meticulous attention to detail and a comprehensive command of the law". It was noted that market sources "enthuse" about Garry. He was described as bringing his "encyclopaedic knowledge" to bear in dealing with cases. It has been said that solicitors praise Garry for his "mastery of the law". They also say, "you can always be sure that he won't miss a thing". Chambers also described Garry as a "standout... on cases of high value or complexity".

## **Construction**

Garry is rated by Chambers UK directory as a Band 1 silk for construction. Chambers says of him that, "He brings a weight of experience and a speed and accuracy of analysis to the most difficult cases which few can match." Garry is a "highly reputed silk" in this area.

Chambers has said of Garry that he "masters the detail, but also has a strategic and commercial approach". "He really is as good as it gets for complex construction cases", and "He is incredibly bright and inspires confidence in clients." He is known as the "go to" for complex construction work. "He has strong technical skills and is an able and confident advocate." "He has a very thorough, analytical brain". His "practical, hands-on approach is praised by instructing solicitors".

Chambers has identified Garry as a "leading" construction advocate who is "exceptionally thorough and client-friendly". It described Garry as a "standout... counsel for construction disputes in Scotland". He is said to combine "a truly forensic attention to detail with superb advocacy skills", and to have "exceptional depth and breadth of expertise" in this area.

## **Restructuring and Insolvency**

Garry is rated by Chambers UK directory as a Band 1 silk for restructuring and insolvency work. "He often advises on high-value and technical insolvency cases". Chambers has described Garry as "Super-bright, extremely thorough and organised", and as a "very smart lawyer".

Previous editions said described him as a "highly recommended" counsel in this area who "is very approachable, methodical and can do things last minute." "He is excellent in all respects; flexible, attentive to detail, and impressive in court." It also noted his "wide ranging experience in insolvency and restructuring issues".

Chambers described him as "very accomplished" in this area. His advocacy skills and considerable experience in this sphere are said to "make him a go to for contentious insolvency matters".

The Legal 500 rates him as a Band 1 silk for company and insolvency work. It has referred to Garry's expertise in this area, noting that he is "Highly experienced in a wide range of insolvency and restructuring issues". It has said that Garry is "Excellent, thorough" and "impressive in court". It also remarked that, "His authoritative and precise advocacy consistently impresses judges."