

Jonathan Barne QC

Year of Call: 2003 Year of Silk: 2017

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Professional Career to date

Devil Masters: Eric Robertson, Chris Shead.

2003 to date: Practising Advocate, Advocates' Library, Parliament House, Edinburgh

2002 - 2003: Devil (trainee advocate) training with Eric Robertson, Advocate (civil law) and Chris Shead, Advocate (criminal law)

2000 - 2002: Shepherd + Wedderburn, Castle Terrace, Edinburgh

Trainee with six-month seats in following departments: (one) commercial litigation, (two) commercial property, (three) energy and intellectual property, and (four) construction

1999 - 2003: Faculty of Law, Edinburgh University, Edinburgh

Tutor (part-time) in Public and Administrative Law

Tutor (part-time) in Scottish Legal Studies

1994 - 1997: Sotheby's, New Bond Street, London

Expert and catalogue in the Chinese Art and Works of Art Department

1993: The Baltic Independent Newspaper, Pärnu mnt., Tallinn, Estonia
Journalist

Education & Professional Qualifications

Edinburgh University, Old College, Edinburgh
Diploma in Legal Practice

Edinburgh University, Old College, Edinburgh
LLB (Distinction)
Thow Scholar of Jurisprudence, Edinburgh University

Christ Church, Oxford University, Oxford
BA (Hons) in Classics (Double First)
Open Scholar, Christ Church, Oxford University

Areas of Expertise

- Commercial Contracts
- Commercial Property
- Construction and Engineering
- Insolvency
- Product Liability
- Professional Liability
- Public Law, Judicial Review and Human Rights

Professional Experience

Since calling to the Bar in 2003, Jonathan has been involved in wide range of commercial and public law litigation. His experience includes construction and contractual disputes, claims by commercial agents, the enforcement of high-value property purchases and the bringing of the first derivative action under the Companies Act 2006. Jonathan is also regularly instructed in professional negligence cases and recently has been involved in a number claims relating to the administration of pensions and other investments.

In public law, Jonathan has been regularly instructed in judicial reviews and statutory appeals both against and on behalf of the Scottish Government. He has also represented the Security Industry Authority, the Scottish Legal Complaints Commission, the Scottish Legal Aid Board and local authorities in housing matters. He was instructed by the successful appellants in the important freedom of information case, *Glasgow City Council v The Scottish Information Commissioner*.

Recent Cases

a. Commercial

- *Gardner Young and Kaim Investments Ltd v Royal and Sun Alliance Insurance Plc* 2019 SLT 597; 2020 SLT 622 - instructed for the defender insurers in relation to a claim under an insurance policy after a fire destroyed city centre premises. The defender resisted payment on the basis of material non-disclosure. This was the first case in the UK to look in detail at the provisions of the Insurance Act 2015.
- *Tweed Homes Ltd v Clydesdale Bank* [Court of Session, 2020] – representing the pursuer developer in relation to an alleged promise of further funding given by the Bank.
- *Brendan Hyland v GKFF- Ennovo Holdings LLC* [Court of Session, 2019] - instructed for the defender in respect of numerous claims, including unfair prejudice proceedings, arising out of a shareholders' agreement relating to a company with specialised equipment and technology.
- *Promontoria (Ram) Limited v John Moore* [2017] CSOH 88 - instructed for the pursuer to enforce guarantees associated with complex loan agreements that had been assigned.
- *Fieldoak Limited (In Receivership) v Citywide Glasgow Limited* [2017] 138 - instructed for the pursuer seeking orders confirming the termination of the authority of property agents in respect of a large property portfolio.
- *Royal Bank of Scotland v O'Donnell* 2015 SC 258 – instructed for the defender in resisting enforcement of bank guarantee with counterclaim for reduction and damages for negligent misrepresentation.
- *Ted Jacob Engineering Group Inc v RMJM* 2014 SC 579 – instructed for the pursuer in an action to recover documents in the context of an international arbitration and the proper application of the Law of Dubai.
- *Lloyds TSB Foundation for Scotland v Lloyds Banking Group Plc* 2013 SC (UKSC) 169 – instructed as junior counsel for the defender in a Supreme Court case concerning a dispute about the proper interpretation of a deed of covenant where a subsequent change in accounting standards had significant consequences for the correct application of the deed.
- *Morrison Sports Ltd v Scottish Power Ltd* 2011 SC (UKSC) 1 – instructed as junior counsel for the defender in a Supreme Court case concerning a dispute over liability for a fire and whether or not a breach of the Electricity Supply Regulations 1988 gave rise to private law rights.
- *Wishart, Petitioner* 2010 SC 16 – instructed for the petitioner in the first derivative action in Scotland brought under the Companies Act 2006; the first "Wallersteiner Order" in Scotland was granted in the course of proceedings.

b. Construction

- *SSE Generation Ltd v Hochtief Solutions AG* [2018] SLT 579 – instructed throughout as junior counsel (2012 to 2019) for the pursuer in a £130m claim arising out of the collapse of a tunnel forming part of a hydro-electric scheme.
- *Field Systems Design Ltd v MW High Tech Projects UK Ltd* [2020] CSOH 17 - instructed for the pursuer to enforce an adjudicator's decision.
- *John Graham Construction Limited v Scott Wilson Scotland Limited* [2019] CSOH 41 – instructed for defender structural engineers in relation to a claim arising out of allegedly

defective drainage design.

- *Queensferry Crossing* [2018] – instructed on behalf of temporary works designers resisting claims arising out of the construction of the Queensferry Crossing.
- *Ayr Environmental Services Ltd v Amec Capital Projects Ltd* [Court of Session, October 2018] – instructed for pursuer in relation to the construction of three wastewater plants under PFI arrangements. The central issue related to the construction of the settlement tanks.
- *West Reg. Street Property Limited v Central Demolition Limited* [2018] CSOH 98 - instructed for the defender in a claim in relation to the proper construction of a without quantities building contract, the issue being whether asbestos removal work should have been treated as a variation to the contract. The case also involved the enforcement of an adjudicator's decision.
- *Europools v WYG Engineering Ltd* [March 2016, Glasgow Sheriff Court] – instructed for the defender engineer in relation to claims arising out of the design of swimming pools with moving floors and booms.
- *Scottish Power Renewables (UK) Ltd v Amec Group Ltd and Halcrow Group Ltd* [2016] – instructed for the pursuer in a claim arising out of the allegedly defective construction of concrete wind turbine bases.
- *Scottish Association for Marine Science v The ERDC Group Ltd (In Administration)* [2016] – instructed for the pursuer in a claim arising out of the construction of a new research facility near Oban.

c. Commercial Property

- *Electronic Communications Code* [2020] – representing various telecommunication operators in relation to applications to the Lands Tribunal for Scotland for rights under the Code.
- *Leafrealm Limited v Edinburgh City Council and others* [2020] CSOH 34 – instructed for the Council in an action relating to a disputed ransom strip, arising out of historic agreements.
- *Shell UK Limited v Stichting Greenpeace Council* 2020 SLT 235 - instructed for the pursuer to seek interdict and interim interdict against protestors seeking access to various offshore installations in order to stage protests.
- *Transocean Drilling UK Ltd v Greenpeace UK Ltd* [2020] CSOH 66 - instructed for the pursuer to seek removal of protestors encamped on a mobile drilling platform *en route* to its offshore location. Thereafter, representing the pursuer in contempt proceedings when the terms of the interim interdict were breached.
- *Demolition Orders* – representing a local authority in respect of 276 demolition orders served relating to an estate that the local authority wished to demolish due to it being below the tolerable standard in terms of the relevant legislation.
- *Gateway Assets Ltd v CV Panels Ltd* 2018 SCLR 736 – instructed for the pursuer in dispute relating to whether or not a break notice had been served.
- *Britannia Invest AS v The Scottish Ministers (for the NHS)* 2018 SLT (Sh Ct) 133 – instructed for the defender in an action brought to rectify a lease in relation to the service charge provisions.
- *Hamilton v The Scottish Ministers* [2017] CSOH 121 - instructed by the pursuer seeking orders against the roads authority in respect of an interference his rights of drainage caused by a motorway.
- *Tonsley (Strathclyde) Limited v Scottish Enterprise* [2016] CSOH 138 - instructed for the defender in a dilapidations claim and the proper construction of the lease.
- *Esso Petroleum Co Ltd v The Scottish Ministers and others* [2015] CSOH 21 – instructed for second defender in a claim arising out of the historical pollution of a site purchased for the M74 extension.

d. Professional Negligence

- *Solicitors* – I am regularly instructed to advise in cases relating to alleged negligence by solicitors.
- *Trustees of X Pension Fund v Y Asset Managers Ltd and others* [2017] - instructed for defender in relation to a claim for damages by the trustees on the basis that the defenders had breached the terms of its discretionary investment mandate by investing in a City Office property, the sale of which resulted in the pension fund sustaining a large loss.
- *Rex Procter & Partners Retirement Benefits Scheme's Trustees v Edwards* [2015] CSOH 83 – instructed for the defender in a claim against an actuary for advice connected with the transfer

out of a pension scheme.

- *Clark's Judicial Factor v Clark's Executors* [2015] CSOH 53 – instructed for the defender in a long-running series of actions arising out of the executry of an estate.
- *Gordon's Trustees v Campbell Riddle Breeze Paterson LLP* [2015] CSOH 31 – instructed for the defender in relation to the service of a notice to quit, including a preliminary issue related to prescription.
- *William Grant & Sons Ltd v Mercer Ltd* [2010] 52 – claim against actuary for an alleged failure to equalise pension rights.

e. Public law and miscellaneous

- *Edinburgh Tram Inquiry* [2017 to 2018] – representing the Scottish Ministers and Transport Scotland at the public inquiry in relation to the procurement and construction of the Edinburgh Tram Project.
- *Class action v Pfizer Inc. and others* [2012 to 2020] – instructed, initially as junior counsel and then as senior counsel, on behalf of Pfizer in relation to product liability claims arising out of alleged consequences of the use of Celebrex.
- *Mazur v Scottish Legal Complaints Commission* [2018] CSIH 45 – instructed for the SLCC in defending its determination that the applicant's complaint was vexatious.
- *Lilburn v Pension Ombudsmen and another* [2018] CSIH 2 – instructed for the second respondent in respect of an attempt by the applicant to have the PO state a case.
- *Wildland Ltd v Scottish Ministers* [2017] CSOH 113 – instructed for the Scottish Ministers in respect of an application for judicial review of a decision to grant planning consent for a windfarm.
- *Coal Pension Properties Ltd v Scottish Ministers* 2016 SC 87 – instructed for the Scottish Ministers in respect of a retail park owner's appeal against a reporter's refusal of its appeal against the local authority's refusal of its application for a certificate of use permitting the retail sale of any non-food goods.
- *Cloburn Quarry Co. Ltd. v HMRC* 2014 SLT 303 – representing the petitioner in an action seeking to suspend summary diligence to enforce the Aggregates Levy in a context where the legality of the tax was in doubt as a result of an investigation by the European Commission into potential unlawful state aid. The case was reclaimed to the Inner House where, after argument, it was sisted pending determination of the Commission's phase II inquiry into the levy.
- *South Lanarkshire Council v Scottish Information Commissioner* 2014 SC (UKSC) 1 – instructed for the appellant in a Supreme Court appeal against a determination of the Scottish Information Commissioner involving aspects of freedom of information and data protection.
- *Smith v Scottish Legal Aid Board* 2013 SC 45 – instructed for the Scottish Legal Aid Board in relation to a claim by counsel for interest on outstanding fees in terms of The Late Payment of Commercial Debts (Interest) Act 1998.
- *RM v Scottish Ministers* [2012] UKSC 58 – instructed for the Scottish Ministers in a Supreme Court appeal in relation to an alleged failure by the Ministers to enact regulations to make effective certain appeal rights provided for in terms of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- *Glasgow City Council v The Scottish Information Commissioner* 2010 SC 125 – representing the pursuer in an appeal about the definition of "information" under the Freedom of Information (Scotland) Act 2002.
- *Public Inquiry: Beaully to Denny Pylons* [2007] – representing one of the objectors in the public inquiry relating to whether or not Scottish Power and SSE should be allowed to replace the existing transmission line from Beaully to Denny with a line of greater capacity.

Advocates Courts & Tribunals

Supreme Court; Court of Session (Inner and Outer House); Sheriff Court; Scottish Land Court; Lands Tribunal for Scotland; Arbitration; Adjudication; Public Inquiries.

Advocates Appointments & Memberships

2008 to 2017: Standing Junior to the Scottish Government

2013 to 2017: Junior Bar's representative on Inner House Users Group

Directories

Chambers (2019/20): Professional Negligence (Band 2)

Chambers (2019/20): Construction (Band 2)

Chambers (2019/20): Commercial Dispute Resolution (Band 3)

Chambers (2019/20): Real Estate Litigation (Band 2)

Legal 500 (2019/20): Commercial Litigation (Band 1)

Legal 500 (2019/20): Public and Administrative Law (Tier 2)

Legal 500 (2019/20): Property, Construction and Agriculture (Tier 1)