

## Jonathan Lake QC

**Year of Call:** 1994 **Year of Silk:** 2008

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### Professional Career to date

2008: Silk

1994: Admitted to the Faculty of Advocates

Devil Masters: The Hon. Lord Bracadale, The Hon. Lord Woolman.

### Education & Professional Qualifications

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### Areas of Expertise

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

### Professional Experience

Jonathan Lake has practised extensively in the fields which concern the activities of commercial clients. Primarily he works in the field of commercial disputes with subject matter including contracts, property and intellectual property. Increasingly, however, legislation and regulation affect the interests of commercial clients and the services provided to them must adapt accordingly. Judicial review is much more common than it used to be as a result. Jonathan practises in these areas and also has experience in the fields of planning and public procurement / competition. Increasingly too the criminal law is extended in ways which have consequences for commercial entities. Jonathan has been instructed by a company charged on indictment with breaches of orders imposing sanctions on Iraq both during investigations and at the time of tendering a plea.

As an advocate Jonathan Lake has had a number of high-profile instructions including the Dunblane Inquiry, the Lockerbie Trial and the trial of Transco plc on charges of culpable homicide and a breach of the Health and Safety at Work Act 1974.

### Recent Cases

#### Cases

*Verathon Medical Canada ULC v Aircraft Medical Limited* [2011] CSOH 19 (Intellectual Property Rights)

Jonathan acted for the defenders in this claim of patent infringement in relation to a medical device. The sum claimed by way of damages by the pursuers was £37m. There was a counterclaim by the defenders seeking revocation of the patent in question. Following proof in the Court of Session, the pursuers' claim that the patent had been infringed was rejected by the Court.

*Emms, Petitioner* [2011] CSIH 7 (Public Law, Judicial Review and Human Rights)

This case concerned a claim by relatives of a patient who had died while under medical care that the Lord Advocate was obliged to institute a Fatal Accident Inquiry or some other inquiry to investigate the circumstances leading to the death. Jonathan was instructed to represent the Lord Advocate when the matter was before the Inner House.

*Hines v King Sturge* 2011 SLT 2 (Professional Liability)

The issue in this case was whether property managers owe a duty of care to the occupiers of property which was damaged by fire. Jonathan acted for the defenders. This case has been appealed to the Supreme Court.

*Council of the Law Society of Scotland v Scottish Legal Complaints Commission* 2011 SLT 31 (Public Law, Judicial Review and Human Rights)

This concerned an appeal by the Law Society against a decision of the Commission that a complaint was not "frivolous, vexatious or totally without merit" in terms of the Legal Profession and Legal Aid (Scotland) Act 2007.

*Arriva Scotland West Limited v Glasgow Airport Limited* (Competition and Public Procurement)

In this case Jonathan acts for Arriva who seek to challenge a decision of the defenders not to give them access to the public transport zone from which to run their bus services to the airport.

*Scottish Criminal Cases Review Commission, Petitioners* 2010 SLT 976 (Criminal Law)

In this case Jonathan acted for the Commission who had sought guidance from the Court as to the steps that they might properly undertaken when reviewing a conviction.

*Scottish Widows Services Ltd v Harmon/CRM Facades Ltd* 2010 SLT 1102 (Commercial Contracts)

The pursuers in this case sought to claim damages in terms of an alleged breach of a collateral warranty granted by architects for a major construction project. Issues arise whether the pursuers were a party who had suffered the loss that flowed from the alleged breaches of duty. The decision at first instance has been reclaimed and a decision is awaited.

*BSA v Irvine* [2010] CSOH 78 (Commercial Contracts)

This was a complex case involving claim made under warranties granted in a share purchase agreement. The issue in this decision of the court concerned recovery of documents and the entitlement of a party to insist in legal professional privilege.

*Inveresk plc v Tullis Russell Papermakers Ltd* 2010 SLT 941 (Commercial Contracts) This and a related case between the same parties ([2010] CSOH 148) involved claimed for consideration payable in terms of a business purchase agreement and claims for damages for breach of the terms of the agreements.

*Network Rail (Waverley Steps) Order* (SI 2010/188) (Planning)

This is the first order granted by the Scottish Ministers under the Transport and Works (Scotland) Act 2007. Jonathan acted for Network rail at the Public Inquiry held to consider objections lodged to the application for the order.

*Macdonald Estates plc v NCP* [2009] CSIH 79A (Commercial Contracts/ Commercial Property)

The underlying issue between the parties was whether a suspensive condition in commercial missives had been purified. The decision as to whether this was the case was taken by an expert appointed in terms of the missives. An issue when arose whether, when taking a decision, the expert was acting as an arbitrator such that he could be required to state a case for the opinion of the Inner House. The

concern of Macdonald Estates, for whom Jonathan acted, was that this issue had to be resolved before a contractual longstop date. This imposed very tight time limits which require a petition for judicial review to be prepared at very short notice and for the first hearing to be held within 10 days. Following an appeal by the respondents, the reclaiming motion was heard in a matter of weeks.

*Upton Park Homes Ltd v Macdonalds* [2009] CSOH 159 (Professional Liability)

This case concerned allegations of professional negligence on the part of solicitors. Allegations were made that the conduct had forced the pursuers into a certain course of action and the issue was whether there were adequate pleadings on this issue and on the issue of the loss that it was claimed had been suffered.

*Possfund Custodial Trustee Ltd v Kwik-Fit Properties Ltd* 2009 SLT 133 (Commercial Property)

The issue that arose in this case was whether a landlord was entitled under the terms of a lease to require intrusive environmental investigations to be carried out on the property let.

*AMN Group Ltd v Gilcomston North Ltd* 2008 SLT 835 (Professional Liability) This case concerned in interpretation of the Prescription and Limitation (Scotland) Act 1973 and, in particular, when the prescriptive period starts to run.

*Aquatone Marine v Strathclyde Fire Board* [2007] CSOH 185 (Competition and Public Procurement)

This was the first case in Scotland seeking damages for breach of procurement regulations to reach the stage of proof. Jonathan acted for the pursuers who were successful in recovering substantial damages representing the profit that had been lost as a result of the breach on the part of the defenders.

*Melville Dundas Ltd (in receivership) v George Wimpey UK Ltd* 2007 SLT 413 (Construction and Engineering) This appeal to the House of Lords concerned the interaction of the Housing Grants, Construction and Regeneration Act 1996 with the JCT form of contract.

## **Advocates Courts & Tribunals**

Supreme Court; House of Lords; Privy Council; Court of Session; High Court of Justiciary; Sheriff Court; Public Local Inquiries; Assessor considering objections to private Bill in the Scottish Parliament.

## **Directories**

### **Chambers**

Commercial Dispute Resolution: Scotland - Jonathan Lake QC is "an extremely able practitioner who brings calm reassurance to difficult situations". "Although he only took silk in 2008, he has already amassed considerable experience of handling contractual, IP and construction disputes and is seen as one of the rising stars of the Scottish Bar."

Planning: Scotland - Jonathan Lake QC, an advocate who offers "focused, commercial advice".

### **Legal 500**

Planning, environmental and licensing - Jonathan Lake QC is "a great all-rounder, who is very knowledgeable and not afraid to roll up his sleeves and get involved in a case".