

## Lesley Irvine

Year of Call: 2012

lesley.irvine@axiomadvocates.com  
07745 180790



### Professional Career to date

Devilmasters: Kenny McBrearty, Anna Poole, Shelagh McCall

2012: Admitted to the Faculty of Advocates

2011: Legal internship, Scottish Human Rights Commission

2010-2011: Bar trainee, Simpson & Marwick

2007-2008: P/T Research Assistant (Editor), University of Kent

2005-2007: Graduate Teaching Assistant (EU law), University of Kent; Postgraduate Research Assistant, University of Kent (Public sector equality duties)

### Education & Professional Qualifications

LLM (By Thesis), University of Kent (2011)

Diploma in Legal Practice, University of Edinburgh (2009)

LLB (Hons) (First Class), University of Aberdeen (2004)

### Areas of Expertise

- EU
- Commercial Contracts
- Public Law, Judicial Review and Human Rights
- Planning
- Clinical Liability
- International

### Professional Experience

Lesley specialises in public and commercial law with an emphasis on human rights, EU and equalities law. She has a particular interest in and recent experience of successfully litigating the public sector equality duty in section 149 of the Equality Act 2010.

Her substantial judicial review practice (acting alone and with senior) includes acting for both petitioners and respondents, including local authorities. She is currently instructed as junior counsel to the Scottish Government in the challenge to the Alcohol (Minimum Pricing) (Scotland) Act 2012, which was recently the subject of a preliminary reference to the CJEU. Lesley was junior counsel for the petitioners in *Morrison & Others v Alistair Carmichael MP & Another* [2015] ECIH 51, the first election petition to be brought in Scotland since 1964. She was instructed as junior counsel for the petitioner in the first challenge to a planning decision of one of the Local Review Bodies established following the changes brought about by the Planning etc. (Scotland) Act 2006. In 2014, she was instructed as junior counsel for the local authority in the FAI at Paisley into the death of Declan Hainey.

Lesley has advised on state aid and other EU as well as general civil matters, including commercial cases, and appears regularly in the Court of Session, including the Inner House and in the commercial

court. She also regularly appears in the Upper Tribunal and First-tier Tribunal (Immigration and Asylum Chamber). She was the Lord Reid Scholar for 2011/12.

## Recent Cases

### Statutory interpretation

#### *Romein v Secretary of State for the Home Department*

[2014] CSOH 174, 2015 SLT 32; [2016] CSIH 24 - British Nationality Act 1981 - s.4C - whether applied to children of citizens of the UK & Colonies by descent - Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) - whether necessary aid to construction.

#### *HHG v Secretary of State for the Home Department*

(Extra Division, 19 March 2015) - whether transitional provisions in s.141 of Legal Aid, Sentencing and Rehabilitation of Offenders Act 2012 applicable - whether principle against doubtful penalisation engaged [NB: reclaiming motion allowed ex tempore on basis of argument at common law].

*Morrison & Others v Alistair Carmichael MP & Another* [2015] ECIH 51 (see: Election law)

### Human rights

*Hunter v Student Awards Agency for Scotland & Others* [2016] CSOH 71 - student loans - age discrimination - whether age limit in Education (Student Loans) (Scotland) Regulations 2007 lawful - test for justification - whether "manifestly without reasonable foundation".

#### *"A" v Secretary of State for the Home Department*

[2015] CSOH 62, 2015 SLT 407; [2016] CSIH 38 - exclusion of spouses of refugees from domestic violence provisions of immigration rules – whether Section E- DVILR lawful - Art.14 - whether discrimination unjustified - test for justification.

#### *LS v Scottish Ministers*

[2015] CSOH 60 - continued failure of Scottish Ministers to lay regulations before Scottish Parliament following declarator of Supreme Court that failure to do so unlawful - whether continued failure contrary to rule of law - whether Art.5 ECHR engaged - whether discrimination under Art.14 ECHR.

*Romein v Secretary of State for the Home Department* [2014] CSOH 174, 2015 SLT 32; [2016] CSIH 24 (see: Statutory interpretation)

*Carroll v Scottish Borders Council* [2015] CSIH 73 (see: Planning, land & environment)

### Immigration and nationality

#### *Mirza v Secretary of State for the Home Department*

[2016] CSOH 73 - 'no time limit' endorsement - whether correct legal test as to proof of residence applied - burden of proof - whether affidavit evidence able to be relied upon.

#### *Anwar v Secretary of State for the Home Department*

[2016] CSOH 91 - naturalisation - "good character" - whether requirement for 10 years' status fetter on discretion - whether paragraph 9.7(b) of Nationality Instructions lawful.

*Romein v Secretary of State for the Home Department* [2014] CSOH 174, 2015 SLT 32; [2016] CSIH 24 (see: Statutory interpretation)

*"A" v Secretary of State for the Home Department* [2015] CSOH 62, 2015 S.L.T. 407; [2016] CSIH 38 (see: Human rights)

### Planning, land & environment

#### *William Tracey v Scottish Ministers*

[2016] CSOH 131 - necessary wayleave - Electricity Act 1989 - whether owner/occupier entitled to compensation for period prior to date of signature - Art.1, Protocol 1 - whether interference with

peaceful enjoyment of possessions - Art.14 - whether discrimination on grounds of 'other status'.

*Carroll v Scottish Borders Council*

[2015] CSIH 73 - Local Review Bodies (LRBs) - Public Participation Directive (PPD) - Art.6 ECHR - EU Charter of Fundamental Rights - decision of LRB regarding planning permission for wind turbine development falling within PPD - whether subject to enhanced standard of review - whether otherwise lawful.

**EU law**

*C-333/14 Scotch Whisky Association & Others v Lord Advocate*

[2016] 1 WLR 2283, [2016] 2 CMLR 27 - CJEU - Reference for a preliminary ruling - Alcohol (Minimum Pricing) (Scotland) Act 2014 - whether minimum price compatible with Regulation 1308/2013 on common organisation of the markets in agricultural products and Arts. 34 & 36 TFEU.

*Carroll v Scottish Borders Council*(see: Planning, land & environment)

**Election law**

*Morrison & Others v Alistair Carmichael MP & Another*

[2015] ECIH 71, 2016 SLT 163; [2015] ECIH 90, 2015 SLT 163 - petition under s.106 of the Representation of the People Act 1983 - whether engaged by statement made by candidate in respect of himself - whether statement at issue related to personal character or conduct - whether made for the purpose of affecting return of any candidate at election.

**Advocates Courts & Tribunals**

Court of Justice of the European Union, Court of Session (Inner & Outer House), Sheriff Courts

**Advocates Appointments & Memberships**

2011 (to date): Member, JUSTICE Scotland (Working Group)

2009 (to date): Member, Discrimination Law Association

2008-2011: Vice-Convenor & Member, Equalities Law Sub-Committee, Law Society of Scotland

**Publications**

*Essential Knowledge for UK Lawyers about the EU Charter of Fundamental Rights*, 12 Juridical Review pp 235-250 (with Anna Poole)