

## The Rt. Hon. The Lord Keen of Elie QC

Year of Call: 1980 Year of Silk: 1993

[richard.keen@axiomadvocates.com](mailto:richard.keen@axiomadvocates.com)



### Professional Career to date

Devil Masters: The Hon. Lord Emslie, Colin N. McEachran QC.

2015: Appointed Advocate General for Scotland

2011: Called as Master of the Bench of Middle Temple

2009: Called to Bar of England and Wales

2007-2014: Dean of Faculty

2006: Elected Treasurer of Faculty

2003-2007: Chairman Police Appeals Tribunal

1997-2002: Chairman of Appeals Committee, Institute of Chartered Accountants in Scotland

1993: Appointed Queen's Counsel

1986-1993: Standing Junior Counsel to Department of Trade and Industry

1980: Admitted to Faculty of Advocates

1976-1978: Tutor in Mercantile Law, University of Edinburgh

### Education & Professional Qualifications

LLB (Hons), University of Edinburgh (1976)

### Areas of Expertise

- Insolvency
- Intellectual Property Rights
- International
- Public Law, Judicial Review and Human Rights
- Commercial Property
- Company, Corporate Finance and Tax
- Construction and Engineering
- Media Law
- Commercial Contracts

### Professional Experience

Richard Keen QC is one of the UK's leading silks, with broad expertise spanning Commercial, Public & Regulatory, Financial Services & Banking and International Law.

From 2015-2020 Richard served as the Advocate General for Scotland. Richard was appointed Advocate General for Scotland on 29 May 2015. For the last three months of David Cameron's ministry he was in addition Minister of State for home affairs. He was reappointed Advocate General by Theresa May and also appointed Lords Minister for the Ministry of Justice. He retained both appointments until his resignation in September 2020. In the latter capacity Richard had responsibility for civil justice in England and Wales and for regulation of the legal profession. He chaired the Lord

Chancellor's advisory committee on private international law (alongside the Rt. Hon Lord Mance). He established (with Sir Geoffrey Vos) and was a member of the Lawtec Delivery Panel. During his time as Advocate General, Richard regularly appeared for the government in the UK Supreme Court; the CJEU and the grand chamber of ECtHR. Some highlights include (more information can be found below): • R (Miller) v The Prime Minister and Cherry v Advocate General for Scotland (2019) • R (Miller) v Secretary of State for Exiting the European Union (2017) • Wightman and others v Secretary of State for Exiting the European Union (2018) Richard was engaged in taking a number of major pieces of legislation through the House of Lords. These included the Scotland Act 2016 and the European Union (withdrawal) Act 2018. Richard represented HMG at the council of justice ministers in Luxembourg. He also represented HMG in respect of justice matters in discussions in China; Singapore; Australia; and USA.

Prior to his appointment as Advocate General, Richard Keen QC was regularly instructed in the Commercial Court; in the Inner House (the Court of Appeal in Scotland) and in the Supreme Court in a range of Commercial and Public Law cases. He is highly regarded for his advocacy particularly in complex commercial litigation and cases involving extensive expert evidence in areas including science, engineering and economics. He is also instructed in matters of insurance, company law and civil fraud. He was instructed for the contractors insurance and reinsurance interest in respect of the Piper Alpha disaster. He led the defence of Lamin Fhimah at the trial of Megrahi and Fhimah in respect of the Lockerbie Pan Am bombing. He also acted for Weir Group plc in the claims and prosecution arising out of breaches of the UN Iraq sanctions.

## Recent Cases

### Cases

#### Commercial

Richard is considered to be a first choice of silk for complex commercial litigation. He is widely instructed in claims arising out of corporate takeovers and acquisitions. He is also instructed in shareholder claims, including s.994. He has considerable experience of litigation involving oil and gas licensing and exploitation. He is regularly involved in multi-jurisdiction litigation involving interlocutory orders and issues of forum and jurisdiction.

#### *Administrators of FM Developments Ltd v Milne and Others (2013)*

Richard is instructed on behalf of the Administrators in a £30million claim for breach of directors duties and unlawful distribution of company funds. The action is proceeding in the Commercial Court.

#### *Project Ling (2013)*

Richard is instructed by the Administrators of an Isle of Man fund in connection with the tracing and recovery of +£200 million of funds distributed through various offshore SPVs. This includes litigation in the UK.

#### *SSE Generation Ltd v Hochtief Solutions AG (2013)*

Richard is instructed by SSE in a +£100 million contract dispute arising out of the construction of a hydro electric scheme. The action is proceeding in the Commercial Court.

#### *Project Neptune (2013)*

Richard is instructed in a long running arbitration arising out of a contract for the refurbishment/rebuilding of a government base.

#### *ICL v Johnston Oil plc (2013)*

Richard is instructed by insurers in a contribution claim arising out of fatal factory explosion. The action is proceeding in the Commercial Court.

#### *Lloyds TSB Foundation v Lloyds Banking Group plc (2013)*

Richard appeared for the Foundation in the UKSC in an action involving the construction and application of an agreement for the funding of the Foundation by the Bank.

#### *Soccer Savings plc v Scottish Building Society (2013)*

Action in the Commercial Court with respect to the enforcement/attempted reduction of a contract for the operation of a football supporters savings scheme.

*Kivuwatt Ltd v Dane Associates Ltd (2012)*

Richard appeared for Dane in the Commercial Court and Court of Appeal in a successful application for the recall of interlocutory orders relating to an ICC arbitration involving a contract for the funding and construction of a power station in central Africa.

*Cosalt Plc and GTC Group Limited v Melville and Others (2012)*

Richard was instructed for Cosalt and GTC in a series of claims arising out of the acquisition of GTC by Cosalt. These involved claims for fraud, breach of contract and breach of covenant. The claims were the subject of a multi million pound settlement.

*Stokers SA v Echelon Wealth Management Limited and Alexander (2012)*

Richard was instructed on behalf of a Swiss group with respect to claims arising out of fraudulent transactions in respect of Contracts For Difference. The action was successfully concluded in the Commercial Court.

*BSA International SA v Irvine and Others (2011)*

Richard acted on behalf of the defenders in a claim for damages in respect of breach of warranty in a share purchase agreement. A challenge to the warranty claim was heard in the Commercial Court. The claimants then appealed and recently settled the case prior to the hearing of the appeal.

*Lloyds TSB Foundation v Lloyds Banking Group plc (2011)*

Richard is instructed on behalf of the Foundation with respect to a claim for the benefit attributable to special shares distributed at the time of the privatisation of TSB Bank. The immediate issue in dispute concerns the effect on the accounts of Lloyds Banking Group plc of the attribution of negative goodwill following the takeover of HBOS. The matter is set down for hearing in 2011.

*Heineken UK Limited v RBS plc (2011)*

Richard was instructed on behalf of the Royal Bank of Scotland in a litigation challenging the validity of loan guarantees. The case concerned the scope of the bank's right to renew or renegotiate loan terms pursuant to a standard term of their loan agreement, without notice to guarantors.

*RBS plc v Carlyle and Others (2011)*

Richard is instructed on behalf of the Royal Bank of Scotland with respect to an appeal from the Commercial Court involving the alleged existence of collateral agreements to commercial loan transactions.

*G4S Cash Centres (UK) Limited v Clydesdale Bank plc (2011)*

Richard was instructed on behalf of the bank with respect to claims involving the construction and application of a services agreement for the distribution of the bank's cash throughout the United Kingdom.

*tie Limited v Bilfinger Berger and Others (2011)*

Richard was instructed on behalf of tie with respect to claims arising out of and in respect of the construction of the Edinburgh Tram Network.

*Bayer CropScience KK v Albaugh Inc [2011] CSOH 158*

This claim involved registration and exploitation of a product after patent expiry in the United States of America. The timing of registration was achieved by means of testing in the United Kingdom which involved patent infringement. Richard acted for Bayer who sought a springboard accounting of profits. A preliminary decision of the Court in 2010 established the precedent for securing a springboard accounting of profits in such circumstances.

*Granville Cooper v Merck Sharp and Dohme Limited and another (2011)*

Richard was instructed by Merck in connection with claims arising out of the licensing, prescription and use of the drug Vioxx in the United Kingdom. The United Kingdom claimants were dismissed from a class action in the United States of America which was settled upon payment of \$4.8 billion.

*Tullis Russell Limited v Inveresk plc (2010)*

*Inveresk plc v Tullis Russell Limited [2010] UKSC 19*

Richard appeared on behalf of Tullis Russell in these cross actions which concerned claims and counter claims arising out of an acquisition agreement and services agreement. Tullis Russell's claim for damages was completely successful following proof in the Commercial Court. Tullis Russell took their defence of the Inveresk claim to the Supreme Court where they were successful on legal arguments relating to the construction of their agreement and a plea of retention. Inveresk then abandoned their action.

*Tor Corporate AS v Sinopec Group Star Petroleum Co Limited* [2010] CSOH 76

Richard appeared for Sinopec in this long running litigation involving the management of the Kan Tan drilling rigs in the North Sea and Gulf of Mexico. Following a six-month arbitration, in which Richard appeared, Tor brought proceedings for judicial review which they subsequently abandoned. Tor's remaining claim for damages came before the Commercial Court in 2010. The major part of that claim, amounting to £64 million, was dismissed.

*Venture Drilling Inc v Larsen Oil and Gas* (2010)

Richard appeared on behalf of Larsen in interlocutory proceedings in the Commercial Court involving the charter and operation of an oil drilling vessel in West Africa. This involved matters of proper law, jurisdiction and forum in the context of a Russian registered vessel, chartered to a Norwegian company, licensed in Sierra Leone and operated from Aberdeen in Scotland.

*Autolink Concessionaires (M6) Plc v Amey Construction Limited and Others* [2010] CSIH 14

Richard was instructed on behalf of Autolink in a litigation involving the determination of the repair and maintenance obligations under a long term DBFO contract for the M6 and M74. Autolink were successful at first instance and upon appeal. The quantification of their claim was then agreed. The case involved the consideration of extensive expert engineering evidence from both UK and US experts.

*Morrison Sports Limited v Scottish Power* (2010)

Richard was instructed to appear on behalf of Scottish Power in the Supreme Court in a lead case to determine the issue of civil liability arising out of breaches of the power regulations. The action against Scottish Power was dismissed.

*Petition Robertson in re RM (Supplies) Ltd* [2010] CSOH 23; [2010] CSIH 58

Richard was instructed for the Petitioner in this s.994 application re unfair prejudice to a minority. The Petitioner secured an order to purchase the shares of the majority directors and secured control of the company. He secured a further order for deduction from the share purchase price of the multi million pound loss which had been made on FOREX contracts entered into without his knowledge. The majority directors eventually abandoned an appeal to the Supreme Court.

*Petition Melanie Wood in re Flamingo Land Ltd* (2010)

Richard was instructed for the Petitioner in this s.994 application re unfair prejudice to a minority. The application was initially defended on the merits but after a series of interlocutory hearings in the Commercial Court the Petitioner's shares were purchased by the company.

*Commonwealth Oil and Gas Corporation v Baxter* 2009 SC 156

Richard appeared on behalf of Commonwealth Oil in a litigation involving the appropriation of oil exploration licenses in Azerbaijan. The principal claim revolved around the issue of directors' fiduciary duties. Commonwealth Oil succeeded on this point in the Commercial Court. They again succeeded in having an appeal dismissed on this point. The decision of the Inner House (Court of Appeal in Scotland) is a leading decision on the scope of directors' fiduciary duties.

*Rosserlane Consultants Limited v Caspian Energy Group* (2009)

Richard appeared on behalf of Rosserlane in a multi jurisdiction litigation involving the grant and assignation of oil exploration licences in Azerbaijan. Proceedings in Scotland are stayed at the present time.

*Clarke v Fennoscandia Bank plc* 2008 SC (HL) 122

Richard was instructed on behalf of the bank in claims involving allegations of fraud, fraud on the court and the enforcement of judgement from US courts. Clarke had engaged in litigation with the bank in the United States, England and Scotland. The action was finally dismissed following appeal to the House of Lords in 2008.

*APC Limited (in receivership) v Amey Construction Limited and Others (2007)*

Richard acted on behalf of the receivers of APC appointed by Royal Bank of Scotland. APC had secured the contract for the earth works in respect of the extension of the M6 and M74 motorways. APC's conduct of the contract was tainted by fraud. The receivers succeeded in establishing a relevant basis of claim for the works. Thereafter the case was set down for a full hearing but was settled on the eve of that hearing.

*Hamilton and Stebbings Inc v Allied Domecq Plc 2007 SC (HL) 142*

Richard was instructed on behalf of Allied Domecq in a claim arising out of alleged breach of an acquisition agreement involving failure to exploit a product post acquisition. The claim was eventually dismissed by the House of Lords.

*Royal Scottish Assurance v Scottish Equitable [2006] CSIH 47*

Richard was instructed by Royal Bank of Scotland in respect of their interest in Royal Scottish Assurance. The claim arose out of a joint venture agreement with Scottish Equitable for the provision of insurance products to RSA. The sums involved about £57 million. Scottish Equitable challenged the contractual basis of the claim at first instance and upon appeal. Their challenge was dismissed and thereafter the claim was settled.

*SP Generation Limited v BE Generation (UK) Limited 2002 SC 517*

Richard acted on behalf of Scottish Power in a litigation involving the payment of up to £320 million under the Nuclear Energy Agreement which regulated the sale of electricity generated at Scottish nuclear power stations. Following interlocutory proceedings the claim was settled by BE Generation.

*Caledonia North Sea Limited v British Telecom & Ors 2002 SC (HL) 117*

These seven test cases went to the House of Lords to resolve the insurance and indemnity claims in connection with the Piper Alpha disaster. There were competing arguments on contribution and subrogation. All but one case settled during the hearing.

## **Regulatory**

Richard has advised a number of power companies in connection with OFGEM investigations with respect to supply contracts.

Richard advised on the issue of international spectrum allocation in connection with the 4G auction process.

Richard recently acted for a major inter dealer broker in connection with an FSA complaint and related issues of judicial review. The FSA proceedings were eventually abandoned.

## **Banking and Finance**

Richard is regularly instructed in litigation involving banks and other financial institutions. His work includes claims arising out of joint venture agreements, service agreements and guarantees.

*Heineken UK Limited v RBS plc (2011)*

Richard was instructed on behalf of the Royal Bank of Scotland in a litigation challenging the validity of loan guarantees. The case concerns the scope of the bank's right to renew or renegotiate loan terms pursuant to a standard term of their loan agreement, without notice to guarantors.

*RBS plc v Carlyle and Others (2011)*

Richard is instructed on behalf of the Royal Bank of Scotland with respect to an appeal from the Commercial Court involving the alleged existence of collateral agreements to commercial loan transactions.

*G4S Cash Centres (UK) Limited v Clydesdale Bank plc (2011)*

Richard was instructed on behalf of the bank with respect to claims involving the construction and

application of a services agreement for the distribution of the bank's cash throughout the United Kingdom. The case is at present the subject of appeal.

*Stokers SA v Echelon Wealth Management Limited and Alexander (2011)*

Richard is instructed on behalf of a Swiss group with respect to claims arising out of fraudulent transactions in respect of Contracts For Difference.

*Royal Scottish Assurance v Scottish Equitable [2006] CSIH 47*

Richard was instructed by Royal Bank of Scotland in respect of their interest in Royal Scottish Assurance. The claim arose out of a joint venture agreement with Scottish Equitable for the provision of insurance products to RSA. The sums involved about £57 million. Scottish Equitable challenged the contractual basis of the claim at first instance and upon appeal. Their challenge was dismissed and thereafter the claim was settled.

### **Public and Administrative Law**

Richard is frequently instructed in matters of judicial review, including challenges to primary legislation of the Scottish Parliament.

*Imperial Tobacco Limited v The Lord Advocate [2012] UKSC 61*

Richard appeared for Imperial in the UK Supreme Court in a challenge to legislation banning the display of tobacco products.

*Perry and others v Serious Organised Crime Agency [2012] UKSC 35*

Richard appeared in the UK Supreme Court for SOCA in proceedings to determine the scope of legislation with respect to the proceeds of crime.

*Petition of Rangers FC (2013)*

Richard appeared for Rangers FC in a successful challenge to a decision of the Appeals Committee of the Scottish FA.

*Tesco Ltd v Aberdeen City Council (2013)*

Richard appeared for Tesco in an application for the suspension of a Local Development Plan and related proceedings for review of a planning decision. The planning authority ultimately withdrew their opposition to the JR.

*Cairn Energy plc v Greenpeace International (2013)*

Richard appeared for Cairn in proceedings to prevent disruption of oil exploration activity in Greenland waters.

*Petition Axa General Insurance Ltd and Others (2012)*

Richard was instructed on behalf of Axa and other insurers in respect of a challenge to the legality of an Act of the Scottish Parliament which would impose an obligation upon insurers to indemnify claims in respect of pleural plaques as claims for personal injury which they insured against. The challenge was advanced on both common law and ECHR grounds.

*Petition X in re Scottish Ministers (2011)*

Richard acted on behalf of a major retailer in respect of a proposed challenge to the Non-Domestic Rates (Levying) (Scotland) (No.3) Regulations which would have imposed a significant rates supplement on large retail premises. In addition to a general vires challenge there were issues with respect to Article 107 TFEU (state aid) and Article 49 TFEU (freedom of establishment). The Regulations were withdrawn.

*Petition Y in re Glasgow City Council (2011)*

Richard is acting on behalf of a major developer in challenging an attempt by Glasgow City Council to employ The Tax Increment Finance Initiative in support of a competing retail development.

*A v Scottish Ministers (2010)*

Richard was instructed for the Scottish Ministers to oppose an application for review in respect of the notification requirements of the Sexual Offences Act 2003. The application was refused at first hearing

but ultimately granted in a conjoined appeal to the Supreme Court.

*Land Securities Group Plc v Scottish Ministers* 2007 SC (HL) 57

This application for review was made in respect of the operation and application of planning guidelines to the proposed development of Ravenscraig as a new town. Richard appeared on behalf of the Joint Committee to oppose the application. The application was dismissed by the House of Lords.

*Scottish Ministers v Scottish Information Commissioner* 2007 SC 330

Richard was instructed to appear for the Scottish Ministers in an appeal against the decision of the SIC with respect to the operation and application of the exemption provided under the Freedom of Information (Scotland) Act 2002. The court refused the appeal and affirmed the application of the relevant tests by the SIC.

*R(Paul) v Assistant Deputy Coroner of Inner West London* (2007)

Richard appeared for the Paul family before the Divisional Court (Admin) and Court of Appeal for review of the coroner's decision in the Princess Diana Inquest to admit documentary hearsay evidence. The challenge was upheld. Richard also appeared at the Inquest.

*Petition Harrods Group and Al Fayed in re Commissioners Of Inland Revenue* (2005)

Richard appeared for the Petitioners to challenge a decision to institute a tax investigation of all companies in the Harrods Group and members of the Fayed family. Following a six-week hearing of evidence the application was refused. An appeal was marked. There was then a settlement which involved the termination of all investigation.

*Lord Gray's Motion* 2000 SC (HL) 46

Richard appeared before the Committee for Privileges of the House of Lords upon the question of whether the Government Bill which proposed the abolition of the right of hereditary peers of Scotland to sit in the House of Lords would breach Article XXII of the Treaty of Union.

### **Advocates Courts & Tribunals**

Supreme Court; House of Lords; Court of Session (Inner and Outer Houses); Public Inquiries; Arbitrations; Adjudications; High Court of Justiciary; Sheriff Court

### **Advocates Appointments & Memberships**

Advocate General for Scotland  
Dean of Faculty  
Member of the Faculty of Advocates  
Member of the Bar of England and Wales  
Bencher of the Honourable Society of the Middle Temple

### **Directories**

#### **Chambers UK 2013**

##### Administrative and Public law

Dean of Faculty Richard Keen QC is a "fabulous advocate" with a focus on the commercial side of public law. A mark of his eminence came with his instruction to act for a group of four insurance companies in the ground-breaking *Axa General Insurance and others v the Lord Advocate*. His performance in this case was described by one source as being "mesmerically good."

##### Commercial Dispute

Richard Keen QC, Dean of the Faculty of Advocates, is "the outstanding advocate of his generation" and "the top civil silk in Scotland." He is the first choice for high-value, complex litigation and is prized for his versatility: "We'd use him for any type of civil law matter," say solicitors. Keen is particularly noted for his "fantastic" court presence and excellent performance in cross-examination. His recent highlights include the case of *Commonwealth Oil and Gas v Baxter* and others.

##### Company

Richard Keen QC of Axiom Advocates is Dean of the Faculty and a superb lawyer who is "brilliant at

anything he turns his hand to." Commentators say he is "very impressive. He's quick to pick up the detail and understand the commercial points, and has a real ability to express an argument in a simple yet persuasive manner."

#### Construction

Richard Keen QC is valued by sources for his attention to detail and his forward-thinking, commercial approach. He is described as "a very accomplished performer," and has recently acted on such key matters as a dispute involving a construction contract and insurance coverage relating to a power station.

#### **Legal 500 2012**

Richard is recommended in Commercial Litigation, Public Law, and Company.