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Iain Steele

"A fantastic barrister in this field, who is easy to work with, strategic and knowledgeable. His written advocacy is a particular highlight."

— CHAMBERS & PARTNERS, 2024

Year of call: **2005**
Degree: **MA (Cantab) (Law) First Class**

Iain has a wide-ranging practice which focuses in particular on all aspects of Public & Regulatory and Civil Liberties & Human Rights. He also frequently undertakes work in the fields of EU & Competition, Professional Discipline, Public Procurement, Financial Services, Sport and Employment.

Iain is ranked as a leading junior in the leading independent legal directories, Chambers UK and Legal 500. Recent comments include:

- "A junior who provides timely, considered and thoughtful advice."- Legal 500, 2024
- "Iain has a huge brain; he cuts through the issues and his drafting is top notch."- Chambers & Partners, 2024

Previous quotes include:

- "He is a superb junior; very effective."- Chambers UK, 2023
- "Extremely good drafting and very analytical. Tremendous work ethic."- Legal 500, 2023

Iain regularly appears in the highest appellate courts, including the Court of Appeal and the Supreme Court, as well as in the European Court of Human Rights and the Court of Justice of the European Union. He has appeared before the Supreme Court in over a dozen cases. Iain has extensive advocacy experience and regularly appears unled at all levels.

Recent highlights of Iain's practice include:

- representing Unison in its successful challenge in the Supreme Court to the fees regime for employment tribunal cases (R (Unison) v Lord Chancellor [2020] AC 869);
- representing the Charity Commission in successfully defending its decision to register a charity with controversial views on transgender rights, in what is believed to be the first case in which one charity has challenged the legal status of another (Mermaids v Charity Commission [2023] UKFTT 563 (GRC));

- representing pensioners in their successful age discrimination challenge to statutory caps on compensation (R (Hughes) v Board of the Pension Protection Fund [2021] EWCA Civ 1093);
- representing the former owners of BHS in the first case in which the High Court has, even on an interim basis, found an arguable breach of the duty of fairness owed to a person who stands to be criticised in a public report (R (Taveta Investments Limited) v Financial Reporting Council [2018] EWHC 1662 (Admin));
- representing the IOPC in successfully defending a challenge to its decision that a police officer should face disciplinary action for allegedly assaulting a student at a protest in Parliament Square (R (Commissioner of City of London Police) v Independent Office for Police Conduct [2018] EWHC 2997 (Admin));
- representing the NHS in successfully defending a challenge to the reconfiguration of the way in which NHS services are commissioned and paid for (R (Jennifer Shepherd on behalf of 999 Call for the NHS) v NHS Commissioning Board and Monitor [2018] EWCA Civ 2849).

Iain is a member of the Attorney General's A Panel.

EXPERIENCE

Public & Regulatory

Iain is recognised as a leading public law junior. He has a wide-ranging public law practice, advising and acting in areas including police powers, local government, education, prisoners' rights, public procurement, social security and community care, commercial judicial review and environmental law. He has extensive experience of representing both claimants and defendants in the Administrative Court and specialist tribunals, the appellate courts and the European courts.

"He is really industrious; a joy to work with."

— CHAMBERS UK, 2023

Iain regularly acts and advises in regulatory and commercial matters, particularly where they raise public law issues. He has acted for Ofcom, Ofgem, Ofwat, the General Medical Council and the Solicitors Regulation Authority in defending numerous judicial review challenges to their regulatory actions. He has also advised other regulators including Monitor, the Office of Fair Trading and the Financial Conduct Authority. Iain also frequently acts for claimants in this area. See the separate section on "Commercial judicial review".

Cases

R (Elliott Associates LP and another) v London Metal Exchange

(Administrative Court, ongoing)

Acting for the claimants in this challenge to the LME's unprecedented action of cancelling agreed trades in the nickel market. The claim raises numerous public law and human rights issues and seeks over $450m in damages.

Mermaids v Charity Commission

[2023] UKFTT 563 (GRC)

Acted for the Charity Commission in successfully defending this appeal against its decision to register LGB Alliance as a charity. The case raised issues about whether the statutory test for charity status is met by a body whose views on certain issues concerning sexual orientation and transgender rights are considered controversial by some people. The appeal, which attracted considerable media attention, was heard over the course of 7 days in September and November 2022.

Ofsted v Information Commissioner

(First-tier Tribunal, ongoing)

Acting for Ofsted in this appeal about whether the Freedom of Information Act requires it to disclose comments from parents about schools in relation to its inspection activities. The case raises important issues about whether anonymity and confidentiality can be guaranteed for parents.

R (O'Neill) v Parole Board

(Administrative Court, ongoing)

Acting for the Parole Board in this challenge to its handling of the claimant's case. The case raises novel issues concerning the Board's powers to reconsider and/or set aside its own decisions and the extent to which it is functus officio after taking a decision.

R (Direkoglu) v Secretary of State for Justice

(Administrative Court, ongoing)

Acting for the Secretary of State in this challenge to the decision to recall the claimant to prison for breach of his licence conditions. The case raises issues regarding delay and alternative remedies as well as the correct approach in law to recall decisions.

R (Milne) v Financial Conduct Authority

(Administrative Court, ongoing)

Acting for the FCA in this judicial review challenge to its approach to an application made under s.28A of the Financial Services and Markets Act 2000. The application invited the FCA to assess compensation for loss caused by an alleged breach of the general prohibition in entering into a loan agreement. The case raises important issues about whether the FCA is entitled to await the outcome of litigation in which the same issues will be decided as those which the FCA would itself need to decide in order to determine the s.28A application.

Simon Ray v Secretary of State for the Environment, Food and Rural Affairs

(First-tier Tribunal, ongoing)

Acting for the Secretary of State in defending the first appeal against a refusal to grant an exemption from the ban on dealing in ivory under the Ivory Act 2018.

R (Taggart) v Royal College of Surgeons

[2022] EWHC 1141 (Admin)

Acted for the RCS in successfully arguing that RCS invited review reports commissioned by healthcare organisations are not amenable to judicial review.

R (AFG) v (1) Met Police, (2) College of Policing

(Administrative Court, 2023)

Acted for the College of Policing in defending this challenge to the retention of records about a suspect who was below the age of criminal responsibility at the time of the alleged offence. The challenge was against both the Met Police, which had retained the records, and the College of Policing, which is responsible for relevant guidance.

Anthony Adler v Secretary of State for Education

(First-tier Tribunal, 2023)

Acted for the Secretary of State in defending this appeal against a restriction preventing the appellant's school from accepting new pupils. The case raised issues about the interpretation and application of the statutory standards which independent schools must meet.

R (Landau Forte Charitable Trust) v Secretary of State for Education

(Administrative Court, 2022)

Acted for Ofsted as an interested party in this judicial review challenge to the Secretary of State's decision to terminate the funding agreement for an academy. The case settled when the decision was withdrawn following a positive Ofsted inspection on the academy.

R (Masters) v The Fundraising Regulator

(Administrative Court, 2021)

Acted for the Fundraising Regulator in successfully defending this judicial review challenge to its handling of the claimant's complaint about a charity.

R (Active Sports Trust Ltd t/a Leisure Leagues) v Tamworth Borough Council

(Administrative Court, 2021)

Acted for the defendant in successfully resisting this judicial review challenge to its decision-making regarding access to leisure facilities. The case raised issues including delay and amenability to review.

Scottish Hydro Electric Transmission v Gas and Electricity Markets Authority

(Competition and Markets Authority, October 2021)

Acted for one of the appellants in these appeals to the CMA against Ofgem's RIIO-2 price control decision, which sets the revenues transmission and gas distribution companies are entitled to collect from customers until April 2026. Eight appellants brought appeals under s. 11C of the Electricity Act 1989 and s. 23B of the Gas Act 1986 challenging various aspects of the price control, including Ofgem's decisions on the cost of equity, the cost of debt, the outperformance wedge, ongoing efficiency, the efficiency benchmark and the licence modification process.

In the matter of the Reproductive Health Group

(HFEA Licensing Committee, 2020)

Acted for the Human Fertilisation and Embryology Authority's Executive in one of the first licensing cases to be decided following a contested hearing in front of the HFEA's Licensing Committee.

R (Edwards) v Ofsted

(Administrative Court, 2020)

Acted for Ofsted in defending its decisions and actions in relation to a high profile school inspection. Ofsted's inspection report identified serious failings at an independent Steiner school, in light of which the school agreed to remain closed indefinitely. The father of a pupil brought the claim on behalf of a wider group of parents who were aggrieved by the report and alleged that Ofsted had an "anti-Steiner agenda". They instructed Michael Mansfield QC and challenged the entire factual basis of the inspection findings. However, in light of the grounds and evidence filed by Ofsted, the claimant withdrew the claim and paid Ofsted a substantial sum in costs.

Sidhu v Secretary of State for the Home Department

(Administrative Court, 2020)

Acted for Dumfries & Galloway Council in this difficult case regarding the provision of accommodation under the Immigration Act 2016 to a foreign national following his release from prison. The case raised a range of complex issues concerning prison law, immigration law and civil liberties.

R (London School of Science and Technology) v Pearson Education Ltd

[2019] EWHC 3129 (Admin)

Acted for the defendant qualification awarding body in successfully resisting a challenge to its decision to withdraw accreditation from a provider on grounds of malpractice.

R (Hughes) v Board of the Pension Protection Fund

[2021] EWCA Civ 1093

Acted for the successful claimants in this challenge to the PPF's decision as to how it would pay their pensions, and accrued entitlements, in the light of the CJEU ruling in Hampshire v Board of the Pension Protection Fund [2019] ICR 327. The Court of Appeal upheld Lewis J's ruling that the provisions in the Pensions Act 2004 that capped the amount of compensation payable gave rise to unjustified discrimination on grounds of age, contrary to the pensioners' directly effective rights derived from the EU Charter of Fundamental Rights as well as being contrary to A1P1 and Article 14 ECHR, such that those primary legislative provisions fell to be disapplied.

Reilly v Secretary of State for Education

[2020] EWHC 1188 (Admin)

Acted for the Secretary of State for Education in an appeal highlighting the stricter approach the courts are now taking in disciplinary cases where the regulated person fails to attend the hearing.

Jones v Secretary of State for Education

[2019] EWHC 3151 (Admin)

Acted for the Secretary of State for Education in an important case regarding governmental powers to supplement statutory procedures with non-statutory guidance and directions.

R (Clarke and others) v Secretary of State for Justice and others

(Administrative Court, 2019)

Acting for the Secretary of State in a series of claims brought by prisoners concerning alleged interference with their legal mail by prison staff.

Nicholson and others v Charity Commission

(CA/2018/0011, 24 April 2019)

Acted for the Charity Commission in successfully defending an appeal against its decision declining to remove three Jewish charities from the Charities Register. The Appellants argued that the charities were complicit in the displacement of Palestinians from their property in Israel. The First Tier Tribunal held that none of the Appellants had standing to bring the appeal.

Lone v Secretary of State for Education

[2019] EWHC 531 (Admin), [2019] IRLR 523

Acted for the Secretary of State in successfully defending a statutory appeal by a teacher who had been the subject of a prohibition order. The case raised an interesting point about apparent bias in relation to the decision being taken on behalf of the Secretary of State by the Chief Executive of the Teaching Regulation Agency, which also has a role in investigating and presenting cases against teachers.

R (Taveta Investments Limited) v Financial Reporting Council

[2018] EWHC 1662 (Admin)

Acted for Taveta, the former owners of BHS, in the first case in which the High Court has, even on an interim basis, found an arguable breach of the duty of fairness owed to a person who stands to be criticised in a public report. Taveta sought an interim injunction restraining the FRC from publishing a settlement document agreed with Taveta's auditors. The basis of the application was that the FRC had acted in breach of the duty of fairness in not affording Taveta's management any 'Maxwellisation' rights. The Court accepted the arguability of Taveta's claim and granted permission to judicially review the FRC. The interim injunction was not granted on the grounds that the "exceptional circumstances" test was not satisfied (although the Judge expressed serious reservations that that test is too onerous).

R (Jennifer Shepherd on behalf of 999 Call for the NHS) v NHS Commissioning Board and Monitor

[2018] EWCA Civ 2849, [2019] PTSR 790

Acted for the defendants in this important challenge to the reconfiguration of the way in which NHS services are commissioned and paid for. The central issue was whether the Health and Social Care Act 2012 permits commissioners and providers of services to agree a new form of payment mechanism called a "Whole Population Annual Payment" (WPAP) linked to the number of people living in the relevant area. The claimant represented a campaign group which objects to the WPAP on the ground that it abandons the concept of "payment by results" and reverts to the concept of a block contracting arrangement, where providers are paid a fixed payment without reference to the number of patients they actually treat. Kerr J dismissed the claimant's argument that a WPAP is not a lawful payment mechanism. The Court of Appeal dismissed her appeal.

R (Commissioner of City of London Police) v Independent Office for Police Conduct

[2018] EWHC 2997 (Admin)

Acted for the IOPC in successfully defending a challenge to its decision that a police officer should face disciplinary action for possible gross misconduct at the 2010 student fees protest in Parliament Square. The allegations against the officer concern the force he used by way of repeated downward baton strikes when in close proximity to protestors, and the possibility that one of those strikes hit a student who suffered a serious head injury. The claim was unusual in being brought by the Commissioner under whose direction and control the officer had been at the time. Under the statutory scheme, the IOPC has a power to direct the Commissioner to bring disciplinary proceedings. The Commissioner argued that it was irrational for the IOPC to conclude that there is a case to answer against the officer. Also unusually for a judicial review, the case required consideration of a large volume of factual evidence. The Divisional Court (Sharp LJ and Garnham J) dismissed the claim.

R (British Telecommunications plc) v Her Majesty's Treasury

[2020] EWCA Civ 1

Iain was instructed in this case as specialist public law counsel (alongside a pensions silk) by the Trustee of the BT Pension Scheme. The Trustee was an interested party in a challenge brought by BT against the Treasury's decision to implement an extension of the indexation of certain benefits in public sector pension schemes in a way which BT said had greatly increased BT's liabilities in respect of the BT Pension Scheme. BT argued that it was unlawful for the Treasury to reject various alternative means of protecting public sector pensions which would not have had a read-across to the BT Pension Scheme. The claim failed.

R (News Media Association) v Press Recognition Panel

[2017] EWHC 2527 (Admin)

Acted for the NMA in its challenge to the PRP's decision to recognise IMPRESS as a regulator under the Royal Charter on Self-Regulation of the Press.

Charity Commission v Cambridge Islamic College

[2018] UKUT 0351 (TCC)

Acted for the Charity Commission in the first case to consider the scope of its statutory power to direct a charity to change its name. The grounds for giving a direction include that a charity's name is "too like" the name of another charity. The Upper Tribunal accepted the Commission's argument that the First-tier Tribunal had applied an unduly narrow test in this regard. The words "too like" should be given their ordinary meaning; that is a broad and open-ended meaning rather than a meaning focusing entirely on visual or aural similarity. It is legitimate also to consider similarity in meaning of the words used in the two names.

EDF Energy Limited/SSE Generation Limited v Gas and Electricity Markets Authority

(Competition and Markets Authority, February 2018)

Acted for GEMA in advising on complex EU law issues and later successfully defending an appeal to the CMA under section 173 of the Energy Act 2004. The case focused on the interpretation of an EU Regulation which sets a cap on the maximum amount of transmission charges that can be imposed on electricity generators. The main issue was whether GEMA had correctly interpreted an exclusion whereby charges "for physical assets required for connection to the system" do not count towards the cap. GEMA concluded that charges in respect of cables running to offshore windfarms were within the exclusion. On that basis, there had been no breach of the cap in 2015-16 and GEMA therefore rejected a proposal that generators receive a rebate of around £120 million. The CMA dismissed an appeal by two large generators and upheld GEMA's decision.

R (Unison) v Lord Chancellor

[2017] UKSC 51, [2020] AC 869

Acted for Unison in its successful judicial review challenge to the fees regime for employment tribunal cases. In a landmark ruling, a seven-judge Supreme Court unanimously held that the fees regime unlawfully breached the fundamental constitutional right to access to justice.

R (Coll) v Secretary of State for Justice

[2017] UKSC 40, [2017] 1 WLR 2093

Acted for the claimant in this successful judicial review challenge. The Supreme Court accepted her argument that the provision of approved premises (formerly known as probation hostels) directly discriminates against women contrary to the Equality Act 2010.

R (Southern Water Services Limited) v Environment Agency

(Administrative Court, 2018)

Acted for Southern Water in a judicial review challenge to the EA's refusal to engage in discussion regarding certain business investment areas for Southern Water's sewage treatment works and overflows. The EA's stance was said to be based on the need to avoid the risk of prejudicing an ongoing criminal investigation. However, it stood to cause serious detriment to Southern Water in preparing its business plan for the purposes of Ofwat's price control process. The case settled following a stay of proceedings to enable negotiations between the parties.

R (Lonsdale) v Judicial Appointments and Conduct Ombudsman

[2019] EWHC 2404 (Admin)

Acted for the JACO in successfully defending a challenge to its decision not to uphold the claimant's complaint regarding the processes followed by the Judicial Conduct Investigation Office. The JCIO had previously rejected a complaint made by the complainant against a senior judge. The case raised issues regarding the ambit of the JACO's statutory functions.

R (La Cochinelle Limited) v Ofsted

(Administrative Court, 2018)

Acted for Ofsted in defending judicial review proceedings in respect of an inspection report concerning the claimant's nursery. The case raised issues concerning interim relief and the lawfulness of publishing an adverse report prior to an internal complaints procedure being completed.

R (Southwood) v Attorney General

(Administrative Court, 2018)

Acted for the Attorney General in defending a claim concerning the lawfulness of the advice given to the Government in relation to the decision to pursue military action in Iraq. The claim was dismissed by the High Court and the Court of Appeal.

R (Watson) v Secretary of State for the Home Department

Case C-698/15 [2017] QB 771; [2018] EWCA Civ 70, [2018] QB 912

Acted for Tom Watson MP in his challenge to powers under the Data Retention and Investigatory Powers Act 2014 to require retention of communications data by public telecommunications operators. The challenge succeeded in the Divisional Court on the basis that the Act does not contain sufficient safeguards to protect the right to privacy. The Court of Appeal referred the case to the Court of Justice of the European Union, which gave a ruling upholding Mr Watson's arguments.

R (Baker Tilly UK Audit LLP) v Financial Reporting Council

[2017] EWCA Civ 406

Acted for the FRC in successfully defending a judicial review challenge to its guidance on when action will be taken in respect of misconduct by auditors and to the decision to take action against the claimant.

R (Goldsworthy) v (1) Parole Board, (2) Secretary of State for Justice

(Administrative Court, November 2017)

Acted for the Secretary of State in a claim brought by a former prisoner concerning delay in release following a decision by the Parole Board that he was in principle safe to release. The case raised several public law and human rights issues.

R (Public Law Project) v The Lord Chancellor

[2016] UKSC 39, [2016] AC 1531

Acted for the Law Society as intervener in support of this successful judicial review challenge to the 'residence test' for civil legal aid.

R (Watch Tower Bible & Tract Society of Britain) v Charity Commission

[2016] EWCA Civ 154, [2016] 1 WLR 2625

Appeared in the Court of Appeal as sole counsel for the Charity Commission in what is now the leading case on the alternative remedy principle in judicial review.

R (Lin & Phyo) v National Crime Agency

(Administrative Court, 2017)

Acted for the NCA in a judicial review claim brought by two Burmese nationals who were convicted of murdering two British citizens in Thailand. The case concerned the UK's policy on providing assistance to countries that retain the death penalty.

Hunt v Charity Commission

[2016] UKUT 210 (TCC)

Acted for the Charity Commission in its successful appeal against the First-tier Tribunal's approach to the time limits for challenging Commission decisions.

R (Diocese of Menevia and others) v City and County of Swansea Council

[2015] EWHC 1436 (Admin), [2015] PTSR 1507

Acted for the claimants in this successful judicial review of a decision to withdraw free bus travel from pupils of faith schools (but not Welsh language schools), on the ground of indirect race discrimination.

Civil Liberties & Human Rights

Iain is recognised as a leading civil liberties and human rights junior, and has a broad practice covering all aspects of this area. He has extensive experience of representing both claimants and defendants in the Administrative Court and specialist tribunals, as well as in the appellate courts and the European courts. He has a particular interest in cases concerning prisoners' rights, police powers and the right to protest.

"Iain understands the client's context, and can very effectively reflect commercial and policy concerns in written and oral advocacy."

— CHAMBERS UK, 2023

Cases

R (Elliott Associates LP and another) v London Metal Exchange

(Administrative Court, ongoing)

Acting for the claimants in this challenge to the LME's unprecedented action of cancelling agreed trades in the nickel market. The claim raises numerous public law and human rights issues and seeks over $450m in damages.

Mermaids v Charity Commission

[2023] UKFTT 563 (GRC)

Acted for the Charity Commission in successfully defending this appeal against its decision to register LGB Alliance as a charity. The case raised issues about whether the statutory test for charity status is met by a body whose views on certain issues concerning sexual orientation and transgender rights are considered controversial by some people. The appeal, which attracted considerable media attention, was heard over the course of 7 days in September and November 2022.

R (Hubbock) v (1) Secretary of State for Justice, (2) Governor of HMP Bure

(Administrative Court, ongoing)

Acting for the Governor of HMP Bure in this challenge to prisoners' access to pornography. The claimant was denied access to numerous pornographic photographs sent to him by his partner. He alleges that this interferes with his Article 8 ECHR rights.

R (Rutley & Attidore) v Secretary of State for Justice

(Administrative Court, 2022)

Acted for the Secretary of State in this challenge to the handling of video footage of searches carried out on prisoners. The case raised complex issues regarding the requirements of Article 8 ECHR and the Data Protection Act 2018.

R (AFG) v (1) Met Police, (2) College of Policing

(Administrative Court, 2023)

Acted for the College of Policing in defending this challenge to the retention of records about a suspect who was below the age of criminal responsibility at the time of the alleged offence. The challenge was against both the Met Police, which had retained the records, and the College of Policing, which is responsible for relevant guidance.

R (Stewart) v Secretary of State for the Home Department

(Administrative Court, 2022)

Acted for the Home Secretary in this challenge to the treatment of historical convictions for homosexual activities that would be lawful today. Convictions for certain offences could be 'disregarded' but others could not, leading to a challenge on Article 8 and 14 ECHR grounds.

Dzwonek v United Kingdom

(ECtHR, 2021)

Acted as sole counsel for the UK Government in this Strasbourg challenge to the UK's compliance with Article 6 in the context of the enforcement of foreign judgments.

Woolfenden v Secretary of State for Education

[2021] EWHC 3397 (Admin)

Acted for the Secretary of State in successfully defending this statutory appeal against an order prohibiting the appellant from teaching. The case raised important issues about the interplay between the statutory teacher misconduct regime and separate legislation governing teachers' pensions, as well as issues regarding compliance with Convention rights.

Advice on the policing of protests

(2020-2021)

Advised Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services in relation to its thematic inspection of the policing of protests. This work involved reviewing the range of existing police powers and criminal offences relevant to protest activities and advising on proposals for reform, with a particular focus on compliance with human rights.

The inspection report is available at Getting the balance right? An inspection of how effectively the police deal with protests - HMICFRS (justiceinspectorates.gov.uk).

Sidhu v Secretary of State for the Home Department

(Administrative Court, 2020)

Acted for Dumfries & Galloway Council in this difficult case regarding the provision of accommodation under the Immigration Act 2016 to a foreign national following his release from prison. The case raised a range of complex issues concerning prison law, immigration law and civil liberties.

R (Hughes) v Board of the Pension Protection Fund

[2021] EWCA Civ 1093

Acted for the successful claimants in this challenge to the PPF's decision as to how it would pay their pensions, and accrued entitlements, in the light of the CJEU ruling in Hampshire v Board of the Pension Protection Fund [2019] ICR 327. The Court of Appeal upheld Lewis J's ruling that the provisions in the Pensions Act 2004 that capped the amount of compensation payable gave rise to unjustified discrimination on grounds of age, contrary to the pensioners' directly effective rights derived from the EU Charter of Fundamental Rights as well as being contrary to A1P1 and Article 14 ECHR, such that those primary legislative provisions fell to be disapplied.

R (Thakrar) v Governor of HMP Long Lartin

(Administrative Court, 2018)

Acted for the defendant in successfully resisting a judicial review claim in respect of prison conditions, alleging violations of Articles 3, 8, 9 and 14 ECHR. The claim was brought by a Muslim prisoner who argued that his human rights were being violated by being confined in a cell with a toilet which did not have a lid, and being required to pray in close proximity to the toilet.

Judicial review of Solicitor General's decision not to authorise an application for a fresh inquest

(2018)

Advised the Solicitor General in relation to a pre-action protocol letter threatening judicial review proceedings in respect of his decision not to provide his authority for the claimants to seek a fresh inquest concerning the death of their son. The deceased had committed suicide but his parents argued that the police and health services might bear some responsibility. The case raised issues regarding whether Article 2 ECHR was arguably engaged in the circumstances such as to require a "Middleton" inquest.

R (Goldsworthy) v (1) Parole Board, (2) Secretary of State for Justice

(Administrative Court, November 2017)

Acted for the Secretary of State in a claim brought by a former prisoner concerning delay in release following a decision by the Parole Board that he was in principle safe to release. The case raised several public law and human rights issues.

R (Unison) v Lord Chancellor

[2017] UKSC 51, [2020] AC 869

Iain acted for Unison in its successful judicial review challenge to the fees regime for employment tribunal cases.

In a landmark ruling, a seven-judge Supreme Court unanimously held that the fees regime unlawfully breached the fundamental constitutional right to access to justice. The Court quashed the statutory Order which imposed the fees.

Iain was not involved in the lower courts, but because of his expertise in this area he was instructed alongside Dinah Rose QC to argue the case in the Supreme Court.

This is one of the most important civil liberties and human rights cases of recent years.

Nordbo v United Kingdom

(Application no. 67122/14, 16 January 2018)

Acted as sole counsel for the UK Government in an application challenging decisions by the Courts of the Bailiwick of Guernsey (a UK Crown Dependency). The case raised issues under Article 6 ECHR.

R (Watson) v Secretary of State for the Home Department

Case C-698/15 [2017] QB 771; [2018] EWCA Civ 70, [2018] QB 912

Acted for Tom Watson MP in his challenge to powers under the Data Retention and Investigatory Powers Act 2014 to require retention of communications data by public telecommunications operators. The challenge succeeded in the Divisional Court on the basis that the Act does not contain sufficient safeguards to protect the right to privacy. The Court of Appeal referred the case to the Court of Justice of the European Union, which gave a ruling upholding Mr Watson's arguments.

Tayo v Charity Commission

[2017] UKUT 134 (TCC)

Acted for the Charity Commission in the First-tier Tribunal and Upper Tribunal, successfully defending a challenge to its decision to open a statutory inquiry into a Jehovah's Witness charity. The case raised issues concerning Articles 9, 11 and 14 ECHR.

R (Lin & Phyo) v National Crime Agency

(Administrative Court, 2017)

Acted for the NCA in a judicial review claim brought by two Burmese nationals who were convicted of murdering two British citizens in Thailand. The case concerned the UK's policy on providing assistance to countries that retain the death penalty.

R (Roberts) v Commissioner of Police of the Metropolis

[2015] UKSC 79, [2016] 1 WLR 210

Acted for Liberty in its intervention in this appeal concerning whether coercive stop and search powers under the Criminal Justice and Public Order Act 1994 are compatible with fundamental rights.

Beghal v Director of Public Prosecutions

[2015] UKSC 49, [2016] AC 88

Acted for Liberty in its intervention in this appeal concerning whether coercive stop, search, question and detention powers under Schedule 7 to the Terrorism Act 2000 are compatible with fundamental rights.

R (Pat Long) v Secretary of State for Defence

[2015] EWCA Civ 770, [2015] 1 WLR 5006

Acted for the mother of a soldier who was killed in Iraq in 2003, who was seeking an Article 2 ECHR compliant inquiry into the circumstances of her son's death.

Smith and others v Ministry of Defence

[2013] UKSC 41, [2014] AC 52

Acted for JUSTICE in its intervention in the latest case to consider the extra-territorial application of the ECHR as regards British soldiers on duty abroad, successfully arguing that the English courts should adopt a wider approach following the ruling of the European Court of Human Rights in Al-Skeini v United Kingdom.

R (Nakash) v Metropolitan Police Service

[2014] EWHC 3810 (Admin)

Acted for the General Medical Council as an interested party in this human rights challenge to the MPS's decision to disclose certain material about a doctor to the GMC.

Van Colle v United Kingdom

(2013) 56 EHRR 23

Acted for the applicants before the European Court of Human Rights in a case concerning the scope of the positive obligation to protect life under Article 2 ECHR. Iain previously appeared in the domestic proceedings: Van Colle v Chief Constable of the Hertfordshire Police [2008] UKHL 50, [2009] 1 AC 225.

R (Mengesha) v Commissioner of Police of the Metropolis

[2013] EWHC 1695 (Admin)

Acted for the claimant in this successful challenge to police action at a demonstration in London in November 2011. The Court's judgment makes clear that police powers to prevent a breach of the peace cannot be used for other purposes such as data gathering.

Austin and others v United Kingdom

(2012) 55 EHRR 14

Acted for the applicants in this case before the European Court of Human Rights concerning the compatibility with Article 5 ECHR of "kettling" of protestors and others by the police at the May Day 2001 demonstration in Oxford Circus.

R (McClure and Moos) v Commissioner of Police of the Metropolis

[2012] EWCA Civ 12

Acted for the claimants in a high-profile judicial review challenge to the policing of the Climate Camp demonstration held during the G20 summit in London in April 2009, raising issues of whether the police containment (or "kettling") of the Climate Camp and associated use of force were unlawful.

R (Sinclair Collis Ltd) v Secretary of State for Health

[2011] EWCA Civ 437, [2012] QB 394

Acted for an Interested Party in a challenge to the ban on selling cigarettes through vending machines, based on Article 34 TFEU (free movement of goods) and Article 1 of Protocol No.1 to the ECHR (right to property).

Commercial Judicial Review

Iain regularly acts and advises in regulatory and commercial matters, particularly where they raise public law issues. He has acted for Ofcom, Ofgem, Ofwat and the Financial Conduct Authority in defending numerous judicial review challenges to their regulatory actions. Iain also frequently acts for claimants in this area.

Cases

R (Elliott Associates LP and another) v London Metal Exchange

(Administrative Court, ongoing)

Acting for the claimants in this challenge to the LME's unprecedented action of cancelling agreed trades in the nickel market. The claim raises numerous public law and human rights issues and seeks over $450m in damages.

R (Milne) v Financial Conduct Authority

(Administrative Court, ongoing)

Acting for the FCA in this judicial review challenge to its approach to an application made under s.28A of the Financial Services and Markets Act 2000. The application invited the FCA to assess compensation for loss caused by an alleged breach of the general prohibition in entering into a loan agreement. The case raises important issues about whether the FCA is entitled to await the outcome of litigation in which the same issues will be decided as those which the FCA would itself need to decide in order to determine the s.28A application.

Scottish Hydro Electric Transmission v Gas and Electricity Markets Authority

(Competition and Markets Authority, October 2021)

Acted for one of the appellants in these appeals to the CMA against Ofgem's RIIO-2 price control decision, which sets the revenues transmission and gas distribution companies are entitled to collect from customers until April 2026. Eight appellants brought appeals under s. 11C of the Electricity Act 1989 and s. 23B of the Gas Act 1986 challenging various aspects of the price control, including Ofgem’s decisions on the cost of equity, the cost of debt, the outperformance wedge, ongoing efficiency, the efficiency benchmark and the licence modification process.

R (British Telecommunications plc) v Her Majesty's Treasury

[2020] EWCA Civ 1

Iain was instructed in this case as specialist public law counsel (alongside a pensions silk) by the Trustee of the BT Pension Scheme. The Trustee was an interested party in a challenge brought by BT against the Treasury's decision to implement an extension of the indexation of certain benefits in public sector pension schemes in a way which BT said had greatly increased BT's liabilities in respect of the BT Pension Scheme. BT argued that it was unlawful for the Treasury to reject various alternative means of protecting public sector pensions which would not have had a read-across to the BT Pension Scheme. The claim failed.

R (Taveta Investments Limited) v Financial Reporting Council

[2018] EWHC 1662 (Admin)

Acted for Taveta, the former owners of BHS, in the first case in which the High Court has, even on an interim basis, found an arguable breach of the duty of fairness owed to a person who stands to be criticised in a public report. Taveta sought an interim injunction restraining the FRC from publishing a settlement document agreed with Taveta's auditors. The basis of the application was that the FRC had acted in breach of the duty of fairness in not affording Taveta's management any 'Maxwellisation' rights. The Court accepted the arguability of Taveta's claim and granted permission to judicially review the FRC. The interim injunction was not granted on the grounds that the "exceptional circumstances" test was not satisfied (although the Judge expressed serious reservations that that test is too onerous).

EDF Energy Limited/SSE Generation Limited v Gas and Electricity Markets Authority

(Competition and Markets Authority, February 2018)

Acted for GEMA in advising on complex EU law issues and later successfully defending an appeal to the CMA under section 173 of the Energy Act 2004. The case focused on the interpretation of an EU Regulation which sets a cap on the maximum amount of transmission charges that can be imposed on electricity generators. The main issue was whether GEMA had correctly interpreted an exclusion whereby charges "for physical assets required for connection to the system" do not count towards the cap. GEMA concluded that charges in respect of cables running to offshore windfarms were within the exclusion. On that basis, there had been no breach of the cap in 2015-16 and GEMA therefore rejected a proposal that generators receive a rebate of around £120 million. The CMA dismissed an appeal by two large generators and upheld GEMA's decision.

R (Southern Water Services Limited) v Environment Agency

(Administrative Court, 2018)

Acted for Southern Water in a judicial review challenge to the EA's refusal to engage in discussion regarding certain business investment areas for Southern Water's sewage treatment works and overflows. The EA's stance was said to be based on the need to avoid the risk of prejudicing an ongoing criminal investigation. However, it stood to cause serious detriment to Southern Water in preparing its business plan for the purposes of Ofwat's price control process. The case settled following a stay of proceedings to enable negotiations between the parties.

R (We Fight Any Claim Ltd) v Financial Conduct Authority

[2017] EWHC 2264 (Admin)

Acted for the FCA in successfully defending a judicial review challenge to the new deadline for bringing complaints about payment protection insurance. The claim raised a number of issues including as to the effect of the ADR Directive.

R (Grace Bay II Holdings Sarl) v Pensions Regulator

[2017] EWHC 7 (Admin)

Acted for the claimants in this judicial review challenge to the issuing of a warning notice under the Pensions Act 2004.

British Gas Trading Limited v Gas and Electricity Markets Authority

(2015)

Acted for SSE in the first appeal to the Competition and Markets Authority under section 11C of the Electricity Act 1989. The appeal challenged GEMA's price control decision for electricity distribution network operators for 2015-2023.

R (Western Power Distribution Limited) v Gas and Electricity Markets Authority

(Administrative Court, 2015)

Acted for Western Power in its judicial review challenge to GEMA's decision to impose upon it a very substantial financial penalty.

R (Traveller Movement) v Office of Communications

[2015] EWHC 406 (Admin)

Acted for Ofcom in a judicial review of its decision that Channel 4 was not in breach of the Broadcasting Code in respect of the "Big Fat Gypsy Weddings" programme.

R (Sainsbury's Supermarkets Limited) v Independent Reviewer of Advertising Standards Authority Adjudications

[2014] EWHC 3680 (Admin), [2015] ACD 15

Acted for Sainsbury's in a judicial review challenge to the ASA's failure to uphold a complaint about misleading comparative advertising by a competitor. The issue was whether a retailer can fairly and lawfully compare the prices of two products when one product is different in its ethical or environmental profile.

R (DM Digital Television Limited) v Office of Communications

[2014] EWHC 961 (Admin)

Acted for Ofcom in a judicial review of its decision to impose a £105,000 fine for breaching the regulatory code of conduct. The Court dismissed an apparent bias challenge based on the fact that Ofcom employees who had investigated the case remained present with the panel of decision-makers during their deliberations.

R (Satellite Entertainment Limited) v Office of Communications

(Court of Appeal, July 2013)

Acted for Ofcom in a judicial review of its decision to impose a £130,000 fine on a broadcaster for breaching the regulatory code of conduct. The case raised issues concerning apparent bias and Article 1 of Protocol No.1 to the ECHR.

Professional Discipline

Iain regularly acts for and against professional regulators such as the General Medical Council and the Solicitors Regulation Authority, as well as other regulators such as the Financial Conduct Authority. He has extensive experience of dealing with judicial review challenges and statutory appeals against decisions of regulators.

"He gives prompt and insightful advice both on technical points as well as pragmatic advice for dealing with a very litigious opponent."

— LEGAL 500, 2023

Cases

R (Taggart) v Royal College of Surgeons

[2022] EWHC 1141 (Admin)

Acted for the RCS in successfully arguing that RCS invited review reports commissioned by healthcare organisations are not amenable to judicial review.

Woolfenden v Secretary of State for Education

[2021] EWHC 3397 (Admin)

Acted for the Secretary of State in successfully defending this statutory appeal against an order prohibiting the appellant from teaching. The case raised important issues about the interplay between the statutory teacher misconduct regime and separate legislation governing teachers' pensions, as well as issues regarding compliance with Convention rights.

Ullmer v Secretary of State for Education

[2021] EWHC 1366 (Admin)

Acted for the Secretary of State in this statutory appeal by a teacher against a prohibition order made following findings of an inappropriate relationship with a pupil.

Reilly v Secretary of State for Education

[2020] EWHC 1188 (Admin)

Acted for the Secretary of State for Education in an appeal highlighting the stricter approach the courts are now taking in disciplinary cases where the regulated person fails to attend the hearing.

Jones v Secretary of State for Education

[2019] EWHC 3151 (Admin)

Acted for the Secretary of State for Education in an important case regarding governmental powers to supplement statutory procedures with non-statutory guidance and directions.

R (Lonsdale) v Judicial Appointments and Conduct Ombudsman

[2019] EWHC 2404 (Admin)

Acted for the JACO in successfully defending a challenge to its decision not to uphold the claimant's complaint regarding the processes followed by the Judicial Conduct Investigation Office. The JCIO had previously rejected a complaint made by the complainant against a senior judge. The case raised issues regarding the ambit of the JACO's statutory functions.

Professional Standards Authority for Health and Social Care v (1) General Dental Council, (2) Ikhlaq Hussain

[2019] EWHC 2640 (Admin)

Acted for the GDC as respondent to an appeal against the decision made by its Professional Conduct Committee to grant an application by a former dentist for his name to be restored to the Dentists Register. The High Court gave an important decision on the extent to which "under prosecution" of a professional disciplinary case can lead to a successful appeal.

Lone v Secretary of State for Education

[2019] EWHC 531 (Admin), [2019] IRLR 523

Acted for the Secretary of State in successfully defending a statutory appeal by a teacher who had been the subject of a prohibition order. The case raised an interesting point about apparent bias in relation to the decision being taken on behalf of the Secretary of State by the Chief Executive of the Teaching Regulation Agency, which also has a role in investigating and presenting cases against teachers.

R (Commissioner of City of London Police) v Independent Office for Police Conduct

[2018] EWHC 2997 (Admin)

Acted for the IOPC in successfully defending a challenge to its decision that a police officer should face disciplinary action for possible gross misconduct at the 2010 student fees protest in Parliament Square. The allegations against the officer concern the force he used by way of repeated downward baton strikes when in close proximity to protestors, and the possibility that one of those strikes hit a student who suffered a serious head injury. The claim was unusual in being brought by the Commissioner under whose direction and control the officer had been at the time. Under the statutory scheme, the IOPC has a power to direct the Commissioner to bring disciplinary proceedings. The Commissioner argued that it was irrational for the IOPC to conclude that there is a case to answer against the officer. Also unusually for a judicial review, the case required consideration of a large volume of factual evidence. The Divisional Court (Sharp LJ and Garnham J) dismissed the claim.

R (Taveta Investments Limited) v Financial Reporting Council

[2018] EWHC 1662 (Admin)

Acted for Taveta, the former owners of BHS, in the first case in which the High Court has, even on an interim basis, found an arguable breach of the duty of fairness owed to a person who stands to be criticised in a public report. Taveta sought an interim injunction restraining the FRC from publishing a settlement document agreed with Taveta's auditors. The basis of the application was that the FRC had acted in breach of the duty of fairness in not affording Taveta's management any 'Maxwellisation' rights. The Court accepted the arguability of Taveta's claim and granted permission to judicially review the FRC. The interim injunction was not granted on the grounds that the "exceptional circumstances" test was not satisfied (although the Judge expressed serious reservations that that test is too onerous).

R (Baker Tilly UK Audit LLP) v Financial Reporting Council

[2017] EWCA Civ 406

Acted for the FRC in successfully defending a judicial review challenge to its guidance on when action will be taken in respect of misconduct by auditors and to the decision to take action against the claimant.

Arch Financial Products LLP and others v Financial Conduct Authority

[2015] UKUT 0013 (TCC)

Acted for the FCA in the Upper Tribunal in appeals against decisions relating to a range of regulatory breaches by an investment management firm. The case raised important issues regarding regulatory standards in the financial services sector in relation to integrity and the management of conflicts of interest.

Shaw v General Medical Council

(Administrative Court, 2015)

Acted for the GMC in defending a judicial review challenge to a decision not to investigate complaints about several doctors that were raised more than five years after the events in question.

Jasinarachi v General Medical Council

[2014] EWHC 3570 (Admin)

Acted for the GMC in an appeal against the sanction imposed by a Fitness to Practise Panel.

R (Nakash) v Metropolitan Police Service

[2014] EWHC 3810 (Admin)

Acted for the General Medical Council as an interested party in this human rights challenge to the MPS's decision to disclose certain material about a doctor to the GMC.

Education

Iain's broad public law practice includes a particular expertise in education cases. He has frequently acted for the Secretary of State for Education and for Ofsted.

Cases

Ofsted v Information Commissioner

(First-tier Tribunal, ongoing)

Acting for Ofsted in this appeal about whether the Freedom of Information Act requires it to disclose comments from parents about schools in relation to its inspection activities. The case raises important issues about whether anonymity and confidentiality can be guaranteed for parents.

Anthony Adler v Secretary of State for Education

(First-tier Tribunal, 2023)

Acted for the Secretary of State in defending this appeal against a restriction preventing the appellant's school from accepting new pupils. The case raised issues about the interpretation and application of the statutory standards which independent schools must meet.

R (Landau Forte Charitable Trust) v Secretary of State for Education

(Administrative Court, 2022)

Acted for Ofsted as an interested party in this judicial review challenge to the Secretary of State's decision to terminate the funding agreement for an academy. The case settled when the decision was withdrawn following a positive Ofsted inspection on the academy.

R (Edwards) v Ofsted

(Administrative Court, 2020)

Acted for Ofsted in defending its decisions and actions in relation to a high profile school inspection. Ofsted's inspection report identified serious failings at an independent Steiner school, in light of which the school agreed to remain closed indefinitely. The father of a pupil brought the claim on behalf of a wider group of parents who were aggrieved by the report and alleged that Ofsted had an "anti-Steiner agenda". They instructed Michael Mansfield QC and challenged the entire factual basis of the inspection findings. However, in light of the grounds and evidence filed by Ofsted, the claimant withdrew the claim and paid Ofsted a substantial sum in costs.

Ullmer v Secretary of State for Education

[2021] EWHC 1366 (Admin)

Acted for the Secretary of State in this statutory appeal by a teacher against a prohibition order made following findings of an inappropriate relationship with a pupil.

Woolfenden v Secretary of State for Education

[2021] EWHC 3397 (Admin)

Acted for the Secretary of State in successfully defending this statutory appeal against an order prohibiting the appellant from teaching. The case raised important issues about the interplay between the statutory teacher misconduct regime and separate legislation governing teachers' pensions, as well as issues regarding compliance with Convention rights.

Reilly v Secretary of State for Education

[2020] EWHC 1188 (Admin)

Acted for the Secretary of State for Education in an appeal highlighting the stricter approach the courts are now taking in disciplinary cases where the regulated person fails to attend the hearing.

R (London School of Science and Technology) v Pearson Education Ltd

[2019] EWHC 3129 (Admin)

Acted for the defendant qualification awarding body in successfully resisting a challenge to its decision to withdraw accreditation from a provider on grounds of malpractice.

Jones v Secretary of State for Education

[2019] EWHC 3151 (Admin)

Acted for the Secretary of State for Education in an important case regarding governmental powers to supplement statutory procedures with non-statutory guidance and directions.

R (Steiner Academy Bristol) v Ofsted

(Administrative Court, 2019)

Acted for Ofsted in defending its decisions and actions in relation to a high profile school inspection. The challenge, which raised numerous grounds including apparent bias against Steiner schools, was withdrawn following the grant of permission.

Lone v Secretary of State for Education

[2019] EWHC 531 (Admin), [2019] IRLR 523

Acted for the Secretary of State in successfully defending a statutory appeal by a teacher who had been the subject of a prohibition order. The case raised an interesting point about apparent bias in relation to the decision being taken on behalf of the Secretary of State by the Chief Executive of the Teaching Regulation Agency, which also has a role in investigating and presenting cases against teachers.

R (Ebonycare Limited) v Upper Tribunal

(Administrative Court, 2019)

Acted for Ofsted as an Interested Party in this case arising from Ofsted's decision to cancel the registration of six children's homes operated by the Claimant. The First-tier Tribunal had dismissed an appeal and the Upper Tribunal refused permission to appeal. The Claimant sought judicial review against the Upper Tribunal. Permission was refused.

R (La Cochinelle Limited) v Ofsted

(Administrative Court, 2018)

Acted for Ofsted in defending judicial review proceedings in respect of an inspection report concerning the claimant's nursery. The case raised issues concerning interim relief and the lawfulness of publishing an adverse report prior to an internal complaints procedure being completed.

Financial Services & Banking

Iain's expertise in the crossover between EU, public and commercial law leads to instructions in the financial services field.

Cases

R (Elliott Associates LP and another) v London Metal Exchange

(Administrative Court, ongoing)

Acting for the claimants in this challenge to the LME's unprecedented action of cancelling agreed trades in the nickel market. The claim raises numerous public law and human rights issues and seeks over $450m in damages.

R (Milne) v Financial Conduct Authority

(Administrative Court, ongoing)

Acting for the FCA in this judicial review challenge to its approach to an application made under s.28A of the Financial Services and Markets Act 2000. The application invited the FCA to assess compensation for loss caused by an alleged breach of the general prohibition in entering into a loan agreement. The case raises important issues about whether the FCA is entitled to await the outcome of litigation in which the same issues will be decided as those which the FCA would itself need to decide in order to determine the s.28A application.

R (Taveta Investments Limited) v Financial Reporting Council

[2018] EWHC 1662 (Admin)

Acted for Taveta, the former owners of BHS, in the first case in which the High Court has, even on an interim basis, found an arguable breach of the duty of fairness owed to a person who stands to be criticised in a public report. Taveta sought an interim injunction restraining the FRC from publishing a settlement document agreed with Taveta's auditors. The basis of the application was that the FRC had acted in breach of the duty of fairness in not affording Taveta's management any 'Maxwellisation' rights. The Court accepted the arguability of Taveta's claim and granted permission to judicially review the FRC. The interim injunction was not granted on the grounds that the "exceptional circumstances" test was not satisfied (although the Judge expressed serious reservations that that test is too onerous).

Henry v Financial Conduct Authority

(2018)

Acted for the FSC in successfully obtaining strike out and summary judgment on various claims brought against it in respect of alleged failures to regulate a mortgage provider.

R (Baker Tilly UK Audit LLP) v Financial Reporting Council

[2017] EWCA Civ 406

Acted for the FRC in successfully defending a judicial review challenge to its guidance on when action will be taken in respect of misconduct by auditors and to the decision to take action against the claimant.

R (We Fight Any Claim Ltd) v Financial Conduct Authority

[2017] EWHC 2264 (Admin)

Acted for the FCA in successfully defending a judicial review challenge to the new deadline for bringing complaints about payment protection insurance. The claim raised a number of issues including as to the effect of the ADR Directive.

R (X Ltd) v Financial Ombudsman Service

(Administrative Court, 2016)

Advised a firm in relation to potential judicial review challenges against the FOS.

Arch Financial Products LLP and others v Financial Conduct Authority

[2015] UKUT 0013 (TCC)

Acted for the FCA in the Upper Tribunal in appeals against decisions relating to a range of regulatory breaches by an investment management firm. The case raised important issues regarding regulatory standards in the financial services sector in relation to integrity and the management of conflicts of interest.

Lucas v Financial Services Authority

Acted for the FSA in successfully obtaining strike out and summary judgment on various claims, including on the basis that it was an abuse of process for the claimant to seek an adjudication on the validity of the FSA's public law decision to cancel his permission other than on a reference to the Upper Tribunal.

Pierce v Financial Services Authority and others

Acted for the FSA in successfully obtaining strike out and summary judgment on various claims brought against the FSA and the claimant's former financial advisors.

EU & Competition

Iain is regularly engaged in EU and competition law matters, in both commercial and regulatory contexts. He has acted for and against numerous regulators on EU and competition law issues, including Ofgem, Ofcom, the Office of Fair Trading and Monitor. He has experience of litigating EU law issues in both the domestic courts and the Court of Justice of the European Union.

Cases

Scottish Hydro Electric Transmission v Gas and Electricity Markets Authority

(Competition and Markets Authority, October 2021)

Acted for one of the appellants in these appeals to the CMA against Ofgem's RIIO-2 price control decision, which sets the revenues transmission and gas distribution companies are entitled to collect from customers until April 2026. Eight appellants brought appeals under s. 11C of the Electricity Act 1989 and s. 23B of the Gas Act 1986 challenging various aspects of the price control, including Ofgem's decisions on the cost of equity, the cost of debt, the outperformance wedge, ongoing efficiency, the efficiency benchmark and the licence modification process.

R (Hughes) v Board of the Pension Protection Fund

[2021] EWCA Civ 1093

Acted for the successful claimants in this challenge to the PPF's decision as to how it would pay their pensions, and accrued entitlements, in the light of the CJEU ruling in Hampshire v Board of the Pension Protection Fund [2019] ICR 327. The Court of Appeal upheld Lewis J's ruling that the provisions in the Pensions Act 2004 that capped the amount of compensation payable gave rise to unjustified discrimination on grounds of age, contrary to the pensioners' directly effective rights derived from the EU Charter of Fundamental Rights as well as being contrary to A1P1 and Article 14 ECHR, such that those primary legislative provisions fell to be disapplied.

Personnel Hygiene Services Ltd v Competition and Markets Authority

(Competition Appeal Tribunal, 2019)

Acted for Rentokil Initial Plc as an Intervener in this challenge by one of its commercial rivals to the CMA's decision in relation to Rentokil's acquisition of Cannon Hygiene Ltd.

EDF Energy Limited/SSE Generation Limited v Gas and Electricity Markets Authority

(Competition and Markets Authority, February 2018)

Acted for GEMA in advising on complex EU law issues and later successfully defending an appeal to the CMA under section 173 of the Energy Act 2004. The case focused on the interpretation of an EU Regulation which sets a cap on the maximum amount of transmission charges that can be imposed on electricity generators. The main issue was whether GEMA had correctly interpreted an exclusion whereby charges "for physical assets required for connection to the system" do not count towards the cap. GEMA concluded that charges in respect of cables running to offshore windfarms were within the exclusion. On that basis, there had been no breach of the cap in 2015-16 and GEMA therefore rejected a proposal that generators receive a rebate of around £120 million. The CMA dismissed an appeal by two large generators and upheld GEMA's decision.

R (We Fight Any Claim Ltd) v Financial Conduct Authority

[2017] EWHC 2264 (Admin)

Acted for the FCA in successfully defending a judicial review challenge to the new deadline for bringing complaints about payment protection insurance. The claim raised a number of issues including as to the effect of the ADR Directive.

R (Unison) v Lord Chancellor

[2017] UKSC 51, [2020] AC 869

Acted for Unison in its successful judicial review challenge to the fees regime for employment tribunal cases. In a landmark ruling, a seven-judge Supreme Court unanimously held that the fees regime unlawfully breached the fundamental constitutional right to access to justice.

R (Watson) v Secretary of State for the Home Department

Case C-698/15 [2017] QB 771; [2018] EWCA Civ 70, [2018] QB 912

Acted for Tom Watson MP in his challenge to powers under the Data Retention and Investigatory Powers Act 2014 to require retention of communications data by public telecommunications operators. The challenge succeeded in the Divisional Court on the basis that the Act does not contain sufficient safeguards to protect the right to privacy. The Court of Appeal referred the case to the Court of Justice of the European Union, which gave a ruling upholding Mr Watson's arguments.

USDAW v Woolworths and Ethel Austin

Case C-80/14, [2015] 3 CMLR 32

Represented the union before the domestic courts and the CJEU in this challenge to the compatibility of UK domestic legislation with the Collective Redundancies Directive.

Secretary of State for Work and Pensions v Tolley

[2015] UKSC 55, [2016] 1 All ER 40

Acted for the Secretary of State in this case concerning the eligibility to UK social security benefits of individuals who have ceased to be economically active and have left the UK for another Member State. The case raised issues concerning the correct interpretation of Council Regulation 1408/71, which the Supreme Court referred to the CJEU.

British Gas Trading Limited v Gas and Electricity Markets Authority

(2015)

Acted for SSE in the first appeal to the Competition and Markets Authority under section 11C of the Electricity Act 1989. The appeal challenged GEMA's price control decision for electricity distribution network operators for 2015-2023.

HMRC v Aimia Coalition Loyalty UK Limited (No.2)

[2013] UKSC 42, [2013] 4 All ER 94

Instructed with Lord Pannick QC to act for Aimia in resisting HMRC's argument, following the Supreme Court's first judgment in this matter, that there should be a second reference to the CJEU. The Supreme Court accepted Aimia's submission that a second reference was not required or justified.

R (Sinclair Collis Ltd) v Secretary of State for Health

[2011] EWCA Civ 437, [2012] QB 394

Acted for an Interested Party in a challenge to the ban on selling cigarettes through vending machines, based on Article 34 TFEU (free movement of goods) and Article 1 of Protocol No.1 to the ECHR (right to property).

TalkTalk Telecom Group plc v Office of Communications

(2013)

Acted for Ofcom in defending an appeal to the Competition Appeal Tribunal against Ofcom's determination of a dispute between TalkTalk and BT. The appeal was ultimately withdrawn.

Procurement

Iain's expertise in the crossover between EU, public and commercial law leads to instructions in procurement cases. He has recently acted and advised in cases involving the Public Contracts Regulations 2015.

Cases

Prospects Services v Department for Business, Innovation and Skills

(2015)

Acted for the claimant in a High Court procurement challenge to a decision to exclude it from tendering for certain contracts to be awarded by the Skills Funding Agency.

Employment

Iain's practice encompasses all areas of employment law. He has a particular interest in discrimination law and regularly appears in cases involving sex, race, age, disability, sexual orientation and religious discrimination.

Cases

R (Coll) v Secretary of State for Justice

[2017] UKSC 40, [2017] 1 WLR 2093

Acted for the claimant in this successful judicial review challenge. The Supreme Court accepted her argument that the provision of approved premises (formerly known as probation hostels) directly discriminates against women contrary to the Equality Act 2010.

R (Unison) v Lord Chancellor

[2017] UKSC 51, [2020] AC 869

Acted for Unison in its successful judicial review challenge to the fees regime for employment tribunal cases. In a landmark ruling, a seven-judge Supreme Court unanimously held that the fees regime unlawfully breached the fundamental constitutional right to access to justice.

USDAW v Woolworths and Ethel Austin

Case C-80/14, [2015] 3 CMLR 32

Represented the union before the domestic courts and the CJEU in this challenge to the compatibility of UK domestic legislation with the Collective Redundancies Directive.

R (Diocese of Menevia and others) v City and County of Swansea Council

[2015] EWHC 1436 (Admin), [2015] PTSR 1507

Acted for the claimants in this successful judicial review of a decision to withdraw free bus travel from pupils of faith schools (but not Welsh language schools), on the ground of indirect race discrimination.

North v Dumfries & Galloway Council

[2013] UKSC 45, 2013 SC (UKSC) 298

Acted for 251 women who brought equal pay claims seeking to compare their pay to that of men employed by the same local authority at different establishments. The Supreme Court upheld the claimants' appeal, holding that they were entitled to rely on their chosen comparators under the Equal Pay Act 1970, properly construed, and that in any event that Act must be read as permitting the comparison by virtue of directly applicable EU law.

Iain also represented women who had succeeded in a similar claim against another local authority in resisting an appeal to the Supreme Court in the case of City of Edinburgh v Wilkinson [2011] CSIH 70. The case settled before the hearing.

Aitchison v South Ayrshire Council

(Supreme Court, 2013)

Acted for the claimants in resisting an appeal to the Supreme Court by the Council which concerned the proper construction and application of the statutory grievance procedure. The case settled shortly before the hearing.

Sport

Iain has appeared and advised in a number of sports cases covering a range of contractual and regulatory sporting disputes, and has also advised on the exploitation of media rights to sporting events.

Cases

Ipswich Town Football Club Company Limited v Chief Constable of Suffolk Constabulary

(High Court, December 2015)

Acted for the club in seeking an interim injunction to require Suffolk Constabulary to continue to supply special police services for home matches. Suffolk Constabulary agreed to do so on the day of the hearing.

BBC Worldwide v UK Athletics

Acted for UK Athletics in a dispute concerning the international broadcast rights to athletics events held in the UK.

Club ownership advice

Advised The Football League on issues concerning club ownership and The League's Fit and Proper Person test, in the wake of Silvio Briatore's ban from Formula One by the FIA and questions as to the ownership of Notts County and Leeds United.

Personal injury advice

Advised The Football Association on a personal injury claim brought by a retired player.

ACHIEVEMENTS

Education

MA (Cantab) (Law) First Class; BCL (Oxon) First Class, (Princess Royal Scholar, Inner Temple)

Prizes & Scholarships

- Eldon Law Scholarship (University of Oxford, 2005; awarded to the most promising Oxford graduate intending to practise at the Bar)
- Overall grade of Outstanding and Worshipful Company of Arbitrators Prize for Civil Law and EC Competition Law (Inns of Court School of Law, 2005)
- Prize for BVC Results (Inner Temple, 2005)
- Princess Royal Scholarship (Inner Temple, 2004)
- College Prize (Magdalen College, Oxford, 2003)
- Arts and Humanities Research Board Award for Postgraduate Study (2002)
- Lucas-Smith Memorial Prize (Queens' College, Cambridge, 2002)
- Foundation Scholarship (Queens' College, Cambridge, 2001)
- Squire Law Scholarship (University of Cambridge, 2000)
- College Exhibition (Queens' College, Cambridge, 2000)

Publications

Iain was a co-author of the Bingham Centre report 'Streamlining Judicial Review in a Manner Consistent with the Rule of Law' (February 2014).

Iain is the co-author of the chapter on equal pay in the Tolley's Discrimination in Employment Handbook (first edition 2008; second edition 2011) and of the chapters on the Human Rights Act 1998 and principles of interpretation in Lester, Pannick and Herberg: Human Rights Law and Practice (published in April 2009).

Iain has published work in a wide range of academic journals. Previous articles include:

- 'Holding the police to account using judicial review' (Legal Action 2013/2014)
- 'Judicial Review in an Age of Austerity: Costs and Funding' [2012] JR 249
- 'Public Law Liability – the End of the Road (For Now)' (2011) 127 LQR 512
- 'Sex discrimination and the material factor defence under the Equal Pay Act 1970 and the Equality Act 2010' [2010] ILJ 264
- 'Judicial Review of the Crown Court and Section 29(3) of the Supreme Court Act 1981' [2008] JR 180

- 'Negligence Liability for Failing to Prevent Crime – the Human Rights Dimension' [2008] CLJ 239
- 'Judicial Independence: Privy Council Divided' (2008) 124 LQR 185
- 'Beyond Equal Pay?' [2008] ILJ 119
- 'Substantive Legitimate Expectations: Striking the Right Balance?' (2005) 121 LQR 300
- 'Tracing the Single Source: Choice of Comparators in Equal Pay Claims' [2005] ILJ 338
- 'Public Law Liability – a Common Law Solution?' [2005] CLJ 543
- 'Public Law Liability – the Human Rights Act and Beyond' [2005] CLJ 8
- 'Note on R (National Association of Health Stores) v Department of Health' [2005] JR 232
- 'Judging judicial inquiries' [2004] PL 738

Memberships

- LIBERTY
- ALBA
- HRLA
- ELBA
- ELA

Selected earlier reported cases

Public & Regulatory

- R (Dally) v Cwm Taf Community Health Council [2015] EWHC 365 (Admin)
- R (Flatley and Donohoe) v Hywel Dda University Local Health Board [2014] EWHC 2258 (Admin), [2014] PTSR D22
- R (Nash) v Barnet LBC [2013] EWCA Civ 1004, [2013] PTSR 1457
- R (Brown) v Canal & River Trust [2012] EWHC 3133 (Admin)
- R (Cart) v Upper Tribunal; R (MR) v Upper Tribunal [2011] UKSC 28, [2012] 1 AC 663
- R (One Search Direct) v City of York Council [2010] EWHC 590 (Admin), [2010] ACD 60
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