
Aidan O'Neill QC (Scot), QC

Year of Call: 1987 (Scotland)
Year of Call: 1996 (Eng & Wales)
Silk: 1999 (Scotland)
Silk: 2017 (Eng & Wales)



email ampersandclerks@advocates.org.uk
tel: 0131 260 5674

Practice Areas

Alternative Dispute Resolution
Civil Liberties and Human Rights
Commercial Dispute Resolution
Employment and Equality Law
European Union Law
Planning & Environmental Law
Private International Law
Public Procurement and Regulation

Qualifications/Education

Practice at the Bar

Bar of England and Wales

February 2017
Appointed Queen's Council (QC) in England and Wales

December 2010
Member, Matrix Chambers, Gray's Inn, London

September 2000
Associate, Matrix Chambers, Gray's Inn, London

July 1996
Called to the Bar of England and Wales

Scottish Bar

July 1999
Appointed Queen's Counsel (QC) in Scotland

1997 – 1999
Standing Junior Counsel to the Scottish Office
Education and Industry Department

July 1987
Called to the Scottish Bar

Practice Profile

Queen's Counsel at the Scottish Bar and of the Bar of England and Wales. A wide ranging legal practice in both London and Edinburgh, with particular experience and expertise in commercial judicial review, environmental/Aarhus law and in employment/equality law. A specialist in EU law, in human rights law and in UK constitutional law. Awarded the Legal 500 UK Bar Award for Scottish Silk of the year for 2020 and EU law Silk of the year in 2015 and Scottish Legal Awards 2017, 2018 and 2019 Silk of the year. A highly experienced pleader before the top courts. Senior counsel in over thirty cases to date from across the UK before the UK Supreme Court/ House of Lords, as well before the Court of Justice of the European Union and the European Court of Human Rights. Previously teaching fellow at Princeton and Edinburgh universities. Author of substantial academic articles, blog posts and legal practitioner texts. Recent cases include:

EU law

2019 *LC Management Services (Scotland) Limited v. The Scottish Ministers and Highlands and Islands Enterprise* [2019] CSOH 72 (re State aid and Francovich damages)

2019 *Case C-93/18 Bajratari v. Secretary of State for the Home Department* EU:C:2019:512 (CJEU reference by NICA on whether income from employment deemed "unlawful" under UK law may establish, in whole or in part, the availability of sufficient resources for EU law purposes under Article 7(1)(b) of the Citizens Directive)

2019 *Case C-129/18 SM (Algeria) v. Entry Clearance Office, UK Visa Section* EU:C:2019:248; [2018] UKSC 9 (CJEU reference by UKSC on whether family member for purposes of EU free movement includes child under Islamic kefalah)

2018 *Case C-621/18 Wightman v. Secretary of State for Exiting the European Union* EU:C:2018:999; [2018] CSH 62; [2018] CSOH 61; [2018] CSH 18; [2018] CSOH 8 (decision by the Inner House of the Court of Session to refer to the CJEU the question of whether Article 50 TEU notification was unilaterally revocable by UK)

2018 *R (Simonis) v. Arts Council England* [2018] EWHC 1822 (Admin) (on the licence requirements under EU law for the transfer of cultural goods from one Member State to another)

2017 *Case C-333/14 Scotch Whisky Association and others v. Scottish Ministers* [2017] UKSC 76; [2016] CSH 77; EU:C:2015:845; [2014] CSH 38; [2013] CSOH 70 (re compatibility minimum pricing for alcohol with EU free movement of goods/CAP)



Ampersand Advocates
Advocates' Library
Parliament House
Edinburgh, EH1 1RF

web ampersandadvocates.com
phone +44 (0)131 260 5674
fax +44 (0)131 225 3642

Education

2012

LL.D University of Edinburgh (Doctoral degree awarded on the basis of an examination and assessment of the academic merits, independent scholarship and legal substance of published books and articles)

1991-92

LL.M. European University Institute, Florence (Masters' degree in Comparative, International and European law awarded on the basis of a thesis "The Government of Judges: a study in judicial politics and the rule of law". Thesis published by the EUI as Law Working Paper 93/3)

1983-1985

LL.M. (Hons.) (First Class) University of Sydney, Australia (Masters' degree in legal and moral philosophy awarded on the basis of a thesis "The Foundations and Structures of Legal Reasoning: an investigation into the role and scope of practical reasoning in our understanding of the law". Awarded Sydney law faculty medal for best Master's degree of 1987)

1982-1983

Diploma in Legal Practice, University of Edinburgh

1978-1982

LL.B. (Hons.) (First Class), University of Edinburgh (Honours courses in: History of Scots Law; Comparative Law; International Private Law; Natural Law and Theories of Justice; Legal Reasoning and Legal Theory)

Memberships/Appointments

2019

Equality and Human Rights Commission "A" Panel (both Scotland and England & Wales) of senior counsel

2017

Fee paid (part-time) Chair of the First Tier Tribunal for Scotland – Housing and Property Chamber

2016

Equality and Human Rights Commission "A" Panel (both Scotland and England & Wales) of senior counsel

2015

Fee paid (part-time) Chair of the First Tier Tribunal for Scotland - Tax Tribunal

2009-2013

Chairman of the Edinburgh Centre for Constitutional Law and Honorary Fellow in the School of Law, University of Edinburgh 2009

2010

Visiting lecturer and course leader in "Human Rights law in Practice", Diploma in Legal Practice at Edinburgh Law School

EU law (continued)

2017 *R (Miller) v Secretary of State* [2017] UKSC 5 on prerogative powers and triggering Article 50 TEU for the UK to leave the EU

2016 *R(Shindler) v. Chancellor of the Duchy of Lancaster* 24 May [2016] UKSC 2016/0105; [2016] EWCA Civ 469; [2016] EWHC (Admin) 957 challenge to the EU and common law constitutional compatibility of the exclusion from the Brexit referendum franchise of British citizens who had exercised their EU free movement and citizenship rights to live outside the UK for more than 15 years.

2013 *R. (Chester) v Secretary of State for Justice/McGeoch v. Lord President of the Council* [2013] UKSC 63; [2011] CSIH 67; [2011] CSOH 65 JR of prisoners' disenfranchisement from elections following within ambit of EU law, viz. local government and for European Parliament

2012 *Walton (formerly Roadsense) v. Scottish Ministers* [2012] UKSC 44 EU law and the Aarhus Convention in relation to duties of strategic environmental assessment, public consultation and statutory title of "persons aggrieved" to object to road schemes on environmental grounds

Constitutional law

2019 *Cherry v. Advocate General for Scotland/Miller v. Prime Minister* [2019] UKSC 41; [2019] CSIH 49; [2019] CSOH 70 (on the lawfulness/constitutionality of HMG's prorogation of Parliament on 28 August 2019)

2019 *Craig v. Advocate General for Scotland and the Lord Advocate* [2019] CSOH 117 (judicial review of the failure/refusal by the UK Governments to commence in Scotland and Scots law the forum bar provisions passed by Parliament re extradition from the UK)

2019 *Gifford v. Advocate General for Scotland and the Lord Advocate* [2019] CSOH 108 (judicial review of the refusal by the UK and Scottish Governments to set up public inquiry into undercover policing in Scotland)

2017 *Janah v. Libya/Benkharchouche v. Sudan* [2017] UKSC 62; [2015] EWCA Civ 33 (on whether EU law principles of access to court may disapply State immunity claims to ET applications)

2017 *R (UNISON) v. Lord Chancellor* [2017] UKSC 51 (on incompatibility of ET fees with fundamental right of access to the court)

2016 *Christian Institute and others v. Lord Advocate* [2016] UKSC 61; [2015] CSIH 64; [2015] CSOH 7 JR on Data Protection grounds of the "named person service" provisions in Part 4 of the Children and Young People (Scotland) Act 2014

2014 *Moohan and others v. Scottish Government* [2014] UKSC 67; [2014] CSIH 56; [2014] CSOH 199 JR of the Scottish Independence Referendum (Franchise) Act 2013 for its exclusion of convicted prisoners from franchise

2014 *R (Sandiford) v. Foreign and Commonwealth Office* [2014] UKSC 44; [2013] EWCA Civ 581; [2013] EWHC 168 (Admin) on whether the FCO had duties at common law under the ECHR to provide funding for legal representation of British nationals facing death penalty abroad



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Sep 2007-Jun 2008

Visiting Professor in the Woodrow Wilson School of Public and International Affairs, and Senior Research Scholar and Fellow in the Program in Law and Public Affairs, Princeton University, NJ, USA.

Publications

Books

EU law after Brexit: a guide for the perplexed (Hart Publishing, forthcoming, 2020)

EU law for UK Lawyers (Hart Publishing, 2011)

Articles and Book Chapters

2019

"EU law in the Supreme Court" in Clarry (ed.) (2017-2018) 9 *UK Supreme Court Yearbook* 518-558

2018

"EU law in the Supreme Court" in Clarry (ed.) (2016-2017) 8 *UK Supreme Court Yearbook* 415-431

"After Brexit: future trade relations between the UK and the European Union" (2018) 18 *ERA Forum* 547-579

"Brexit, Bilateral Investment Treaties and their Enforcement" (2018) 18 *ERA Forum* 513-546

2017

"EU fundamental rights in a devolved United Kingdom", Chapter 8 in Douglas-Scott (ed.) *Research handbook on EU law and human rights* (Edward Elgar Publishing, 2017) 186-208

"Miller, Brexit and breUK-up" (March 2017) *Counsel* 27-29

2016

"(Dis)Enfranchisement and Free Movement" Chapter 4 in Koutrakos, Nic Suibhne & Syrpis (eds.) *Exceptions from Free Movement Law* (Hart Publishing, 2016) 53-79

"European Dimension" (2015-2016) 7 *UK Supreme Court Yearbook* 336-346 (with Aidan Wills)

2015

"Strategic Litigation before the European courts" (2015) 16 *ERA Forum* 495-509

2014

"Not waving but drowning: EU law, common law, fundamental rights and the Supreme Court" (2014) 5 *UK Supreme Court Yearbook* 178-198

2013

"The courts, the church and the constitution revisited" Chapter 46 in Burrows, Johnston & Zimmermann (eds.)

Private international law

2018 *Docherty's Executors v. Secretary of State for Business, Innovation and Skills* [2018] CSIH 57 (Scots law is *lex loci delicti* and applicable law where wrongful asbestos exposure in Scotland but asbestos related condition then developed in England)

Human rights law

2018 *Campbell v. Dugdale* [2018] SC EDIN 49 (defamation action raising issues of fair comment defence consonant with Article 10 ECHR)

2018 *Quyên Van Phan v Her Majesty's Advocate* [2018] HCJAC 7 (on defences available to criminal charges for those claiming to be victims of modern slavery/people trafficking)

2018 *Maguire's Judicial Review of the General Council of Bar of Northern Ireland* [2018] UKSC 17; [2015] NIQB 4 (JR of compatibility of NI Bar Council rules requiring instruction of senior counsel with Convention right to lawyer of one's choosing)

2017 *AB v. Her Majesty's Advocate* [2017] UKSC 25; [2017] HCJAC 70 (JR of Scottish legislation removing reasonable belief defence as to the age of a sexual partner)

2016 *Gordon Ross v. Lord Advocate* [2016] CSIH 12; [2015] CSOH 123 JR challenge to the Lord Advocate's failure/refusal to publish guidelines on prosecution policy in cases of assisted suicide

2010 *Cadder v. Her Majesty's Advocate* [2010] UKSC 43 on the Convention right to have a solicitor present during a police interview while in police detention

2010 *R (JF and Thompson) v. Minister of Justice* [2010] UKSC 17 (Article 8 ECHR right to privacy and its compatibility with the imposition of indefinite period of notification on the sex offenders register without provision for review or removal)

Public law

2019 *MH v. Mental Health Tribunal for Scotland* [2019] CSIH 29 (whether a Mental Health Tribunal considering an application for compulsory preventive hospital detention and medical treatment of an individual was properly constituted by the legal chair participating by conference call rather than in person)

2018-20 *Infected Blood Inquiry: chair Sir Brian Langstaff (ongoing)* (acting for c250+ core participants of those from Scotland infected and affected by virally contaminated blood from blood transfusions and blood products)

2017 *Petroineos Manufacturing Scotland Ltd. v. Clydeport Operations Ltd* [2017] CSOH 49 (on whether Clydeport was the statutory harbour authority within the Faslane Naval Dockyard with power to impose conservancy charges on floating oil storage units berthed there).



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fax +44 (0)131 225 3642

Judge and Jurist: essays in memory of Lord Rodger of Earlsferry (OUP, 2013) 637-653

"The sovereignty of the (Scottish) people: 1689 and all that" (2013) 18 *Judicial Review* 446-463

"Back to the future? Judges, politicians and the constitution in the new Scotland" (2013) 18 *Judicial Review* 45-71

2011

"EU law and Fundamental Rights" (2011) *Judicial Review* 216-247

"The curtailment of criminal appeals to London" (2011) 15 *Edinburgh Law Review* 88-92

"Prosecuting Crimes Against Peace Before the Scottish Courts" in Johnson & Zelter (eds.) *Trident and international law: Scotland's obligations* (Edinburgh: Luath Press, 2011) 177-201

2010

"Human rights and people and society" Chapter 2 in Sutherland, Goodall, Little & Davidson (eds.) *The Scottish Parliament: The Early Years* (Edinburgh University Press: 2010) 35-57

2009

"Limited Government, Fundamental Rights and the Scottish Constitutional Tradition" (2009) *Judicial Review* 85-128

"Constitutional Judicial Review in Scotland – some recent developments" (2009) 14 *Judicial Review* 267-290

"Roman Catholicism and the temptation of shari'a" (2009) 15 *Common Knowledge* (Duke University Press) 269-315



He is extraordinarily able,
and has astonishing depth
and breadth of knowledge.

Chambers & Partners

Employment law

2019 *Idu v. East Suffolk and North Essex NHS Foundation Trust* [2019] EWCA Civ nyr; [2019] UKEAT/15/18 (whether disciplinary proceedings against a consultant surgeon were properly to be characterised for the purpose of disciplinary procedures as professional misconduct as or personal misconduct)

2019 *Anwar v. Advocate General for Scotland and the Lord Advocate* [2019] CSIH 43 (on whether interim diligence to freeze employer's assets available to claimants before Employment Tribunals)

2019 *R (Mackenzie) v. University of Cambridge* [2019] EWCA Civ 1060 [2017] EWHC 2698 (Admin) (on whether a re-engagement order from an Employment Tribunal created any enforceable legal obligation on an employer actually to re-engage a previously unfairly dismissed employee)

2017 *O'Brien v. Scottish Ministers* [2017] CSOH 96 on security of tenure and statutory powers of removal of chairs of public inquiries held under the Inquiries Act 2005

2017 *Informa UK Ltd. v. McDougall* [2017] CSOH 149 (employment restrictive covenant)

2015 *Hainsworth v. Ministry of Defence* 1 December [2015] UKSC re Article 5 of Directive 2000/78 and the duty of an employer to make reasonable adjustments within the context of associative discrimination to accommodate the disability needs of a dependent child of an employee)

2012 *Ravat v. Halliburton Manufacturing & Services Ltd* [2012] UKSC 1; [2010] CSIH 52 (whether a UK employment tribunal had jurisdiction to adjudicate on an unfair dismissal claim from an oil industry employee working outside the EU for a German company)

Religion and law

2014 *St. Margaret's Children and Family Care Society v. Office of the Scottish Charity Regulator* SCAP App 02/13 (Scottish Charity Appeal Panel, 31 January 2014) whether religiously based adoption society could be required to amend its published guidance to ensure no discrimination on grounds of religion and belief or sexual orientation in respect of prospective adoptive parents

2013 *Bulls v. Preddy and Hall* [2013] UKSC 73 whether Christian guest house owners could, on grounds of religious conviction, lawfully refuse a double-bedded room to a couple in a civil partnership

2013 *London Christian Radio v. Radio Advertising Clearance Centre* [2013] EWCA Civ 1495 whether the ban on political advertising extended to an advertisement seeking information about claims of marginalization of Christians in the workplace