Mark Henderson

Call: 1994

Email: m.henderson@doughtystreet.co.uk

Profile

Mark specialises in media, public and human rights law.

He has won Legal Aid Barrister of the Year, the citation for which noted *“his agility of intellect and encyclopaedic legal knowledge combined with his forensic attention to detail"*. Citations in the main legal directories have included: *“One of the finest legal minds at the Bar”*; *“an awesome intellect and really gets into the detail of a case”*; *“never compromises on standards”*; *“has usually already thought of every point he is confronted with in court and has a better answer"*; *"impresses with his top-notch courtroom skills and confidence in both national and international courts"*; *"his mind is as sharp as a razor blade, and he is a masterful legal tactician"*; *"An absolute perfectionist”*; *"a master of tactics and strategy"*; *"incredibly bright"*.

He has acted in numerous leading media, human rights, and public law cases over the last 25 years. Clients have ranged from the Leader of the Opposition to survivors and bereaved in the Grenfell Tower Inquiry. He has developed and acted in strategic litigation in the UK (e.g. winning the right to settle in the UK for thousands of Gurkha veterans) and in Europe (e.g. securing human rights protection for thousands of asylum seekers subject to inter-state transfers under the Dublin regime). He is accustomed to working on test cases in tandem with

public campaigns (such as the award winning Gurkha Justice Campaign). He has acted for national and international NGOs in public interest interventions at the highest level, in addition to handling interventions in his own cases (such as Amnesty International, the Equality and Human Rights Commission, UNHCR and numerous EU member states). He was appointed Standing Counsel to the Labour Party in 2019.

He is instructed as lead counsel against silks in both domestic and international courts. International cases include the landmark European Court of Justice case of **McCarthy**, in which he defeated the UK's claim to a unilateral right to suspend free movement rights. He was lead counsel throughout, ultimately appearing against the Attorney General, who told the Grand Chamber that *"the issues are of exceptional importance from the perspective of the UK"*.

He developed the seminal case of **NS** as the first challenge to the UK's claimed opt out from the Charter of Fundamental Rights and the lead case across the EU on member states' human rights duties when making interstate transfers of asylum seekers under the Dublin system. He acted as lead counsel in the High Court against a silk led team, and appeared as lead advocate in the Court of Justice Grand Chamber. It ruled that the UK was bound by the Charter, which was seen as carrying high constitutional impact in that courts were bound to disapply primary legislation where it was incompatible with ECHR/ Charter rights (within the scope of EU law).

Domestically, he was lead counsel for the Labour Party in one of the most politically important and sensitive cases ever heard by UK courts, in which he led its successful defence of the National Executive Committee's ruling on members' entitlement to vote for the incumbent Leader of the Party in a leadership election (the other parties to the litigation being represented by silk led teams).

He is accustomed to making urgent court applications in cases ranging from media injunctions to expulsion.

Key areas of law in summary are:

Media and communications: *defamation; privacy/misuse of private information; data protection/GDPR; harassment by publication; breach of confidence; breach of copyright; passing off; media regulation; judicial review on free speech/ Art 10 and privacy/ confidentiality/ Art 8 grounds.*

He has acted in some of the most high profile defamation litigation in recent years, such as a 2021 Court of Appeal judgment in which he defended the former Leader of the Opposition for answers given on BBC One's Andrew Marr Show when interviewed as Leader, and in defence of the free speech of a major trade union in a case identified in commentary as one

of the top 10 cases of 2019 across common law jurisdictions. He acted as sole counsel for the Labour Party in the most high profile defamation case it has ever faced (under an intense national spotlight and with the other parties represented by silks).

In his claimant practice, he has won extremely large damages in recent years against the BBC and almost all national newspapers in libel, privacy, harassment by publication, and data protection claims. His clients have included politicians, journalists, activists, NGOs, a TV station, and a former Guantanamo detainee.

He also acts extensively for defendants including non-traditional newspapers, online news and bloggers, trade unions, politicians, activists, political parties, and others who face defamation claims for what they have said, often concerning issues of public importance, on mainstream media, on blogs/social media, and in print. His work as Standing Counsel to the Labour Party has involved advising on defamation, privacy and data protection issues, often fast moving and of national and political importance. He acts for trade unions in industrial disputes in defamation and harassment actions brought in defence of their members, and has acted in defence of their free speech against libel action by corporations with whom they are in industrial dispute.

The application of human rights to media and communications cases is one of his specialities. His public law and standards work includes leading free speech/Art 10 and privacy/Art 8 judicial reviews and appeals (below). He also acted in one of the leading Strasbourg authorities defining the scope of private life in Art 8 and in an Art 10 case on the regulation of offensive speech on broadcast media.

Public law and human rights: *asylum and immigration; public inquiries; unlawful detention; community care; Equality Act challenges to policies and decisions of public authorities particularly involving disability rights; judicial review generally.*

He acted for 66 bereaved and survivors in Phase 1 of the Grenfell Tower Inquiry which resulted in detailed findings on the events on the night of the fire, and conclusions that the Tower did not comply with building regulations designed to prevent the spread of fire and that inadequacies in the emergency services' planning and response on the night contributed to the loss of life. It made numerous recommendations aimed at improving planning for high rise fires and the emergency response to them, and on warning and evacuation measures.

He has appeared in numerous leading asylum and immigration cases, including a series of test cases which protected all Zimbabweans from expulsion to that country for a number of years because of risk of ill-treatment by the Mugabe regime, culminating in a landmark 'country guidance' ruling that a large proportion of Zimbabwean claimants were entitled to refugee status. He has also acted in several leading judicial reviews and civil claims for unlawful detention against the Home Office, winning judgments that include a ruling that the

Home Secretary's practice of using administrative detention powers to detain Foreign National Offenders pending criminal prosecution was unlawful.

In the British Army Gurkha judicial review, he acted from the outset (ultimately led by Ed Fitzgerald QC) in the test case which overturned the UK Government's decades-old refusal to allow Gurkha veterans to settle in the UK. Combined with a public campaign, this led to the Government's defeat in the House of Commons and to a right to settle for thousands of veterans. He was a member of the delegation that collected the Human Rights Award from Justice and Liberty on behalf of the Gurkha Justice Campaign for their victories in the High Court and in Parliament.

Many of his human rights and public law cases have tested and expanded the boundaries of disclosure and candour duties owed by ministers and public authorities. Leading judgments on the duty of candour in judicial review include a ruling giving emphatic guidance to ministers and the Government Legal Department on their duty of candour, which followed a long disclosure battle in the Administrative Court to obtain internal Home Office documents about detention and removals. Another is a leading Court of Appeal authority on the Home Secretary's duty to disclose guidance that is unhelpful to her case when she is defending her asylum decisions on appeal.

Leading freedom of expression/ Art 10 challenges for journalists and elected representatives are noted in the following section. His case of S expanded privacy rights in public law. It established that breach of confidence claims could be brought in judicial review and expanded the public law duty on public authorities when considering release of sensitive information, and established that a public authority could be liable for the disproportionate release of information, even where done in purported compliance with its duty of candour in court proceeding.

He won the first ruling that the Home Secretary's No Recourse to Public Funds (NRPF) policy was unlawful by reason of breach of the Public Sector Equality Duty (PSED) to disabled people. Other Equality Act cases have challenged policies and decisions of public authorities on grounds of disability, race, sex and age, including ground-breaking challenges testing ministers' duties under the PSED when critical public services are contracted out.

His landmark human rights work as lead advocate in the Court of Justice is mentioned above. In the European Court of Human Rights, as well as the Art 8/private life and Art 10/free speech cases noted above, other leading authorities include the first ever successful Strasbourg challenge to confiscation under the Proceeds of Crime Act 2002, in which the ECtHR held that confiscation violated the right to peaceful enjoyment of property under A1, P1.

Public interest interventions at the highest domestic level have included acting for 14 organisations, including Amnesty International, Human Rights Watch, and the Law Society, in the internationally acclaimed case which established that no circumstances could permit the admission of evidence obtained through torture, and for Liberty in an intervention arguing that the Special Advocate regime in terrorism cases was incompatible with common law constitutional rights and the ECHR.

Governance, standards and regulation: *contractual rules and governance of unincorporated associations, including political parties; public standards codes for elected representatives; statutory and contract based regulation, especially media related; election law and regulation of campaigning, including electronic communications.*

He has acted in some of the leading freedom of expression authorities on media regulation and on public standards codes governing elected representatives. He was lead counsel against a silk led team for the Public Services Ombudsman in the leading High Court appeal on the application of Art 10 to public standards codes (which quashed the sanction for the way in which a councillor had criticised officers as being a disproportionate interference with the councillor's freedom of speech).

He also acted in the leading case on the application of Art 10 to broadcasting regulation, which established the domestic law right of individual journalists, broadcasters and presenters to challenge Ofcom rulings in which their speech is held to have contravened the Broadcasting Code, even if the licensee broadcast company accepts the ruling against it.

He has advised the Labour Party and the Leader of the Opposition's Office for several years on national constitutional and legal issues, and party compliance, disciplinary, equality, and governance issues (including, from 2019, as Standing Counsel to the Party). These have encompassed critical and fast developing legal issues on the law governing general election campaigns and fundamental constitutional issues about who had the right to try to form a minority government during the hung parliament from 2017-2019.

He has also been engaged to advise at the highest level internationally on issues of fundamental constitutional importance on a confidential basis.

Work beyond casework

He is an elected Trustee and Senior Vice Chair of the Spinal Injuries Association (SIA), the leading charity supporting spinal injured people in the UK. He chairs its Programmes Committee overseeing its services, advocacy, and campaigning on paralysis issues and on disability rights.

He was appointed to the Bar Council Disability Panel in 2021. Earlier Bar Council work includes serving on the Equality Code implementation committee which was responsible for

adding sexual orientation to the protected grounds in the Bar's Equality Code.

He was one of the longest ever elected members of the Board of the Immigration Law Practitioners Association (ILPA) from 2000 until he stood down in 2012, representing ILPA on various judicial and governmental stakeholder groups, and contributing to briefings and evidence for parliamentary and government consultations/inquiries on refugee and migrant rights and access to justice.

He has addressed conferences and seminars for organisations such as Justice, Legal Action Group, the Public Law Project, the Centre for European Legal Studies at Cambridge, and the British Institute of International and Comparative Law.

He is the original author, and now co-author, of the **Best Practice Guide to Asylum and Human Rights Appeals**. He is co-author of the Blackstone's Guide to the Asylum and Immigration Act 2004.

Direct access

He is public access accredited and will accept direct access instructions via his clerks in advisory work and to act as counsel in litigation where it is appropriate to do so. (Please note that he cannot reply to correspondence on direct access cases until instructions are assessed and confirmed by his clerks).

What the directories say

"*Mark has a real commitment to his clients. He is prepared to back his own judgment and has obtained some notable successes while doing so."* - Legal 500 2023

Mark Henderson is frequently instructed by high-profile individuals and groups, including trade unions, in high-stakes libel actions. He also has noted expertise in freedom of expression disputes. Chambers and Partners 2023

"A powerhouse at the Immigration Bar." - Chambers and Partners 2023

"Mark is highly respected in the sector and is doing high-level work." - Chambers and Partners 2022

"Mark is an excellent barrister, both technically and as an advocate." - Legal 500 2022

Education

MA (Hertford College, Oxford)

Related practice areas

Media, Defamation and Freedom of Expression
Data Protection and Information Law

Administrative & Public Law
Immigration
Inquests and Public Inquiries
Actions Against the Police and Public Authorities
Immigration Detention Group

Media, Defamation and Privacy

Mark specialises in media and communications law, acting for both claimants and defendants in defamation, misuse of private information, breach of confidence, copyright, harassment by publication, data protection, and other intellectual property claims such as passing off. He also specialises in free speech/Art 10 and privacy/Art 8 challenges in judicial reviews and governance/standards/disciplinary cases.

He is experienced in combining defamation with privacy claims, and in running data protection claims in tandem with defamation claims (see the separate Data Protection section of this profile).

Significant cases

He has appeared in some of the most high profile defamation litigation to reach the higher courts in recent years. In one of the most significant recent Court of Appeal cases, he acted for Jeremy Corbyn MP who was sued for what he had said when interviewed as Leader of the Opposition on the Andrew Marr Show on BBC One (so engaging the protection of political speech).

He acted as sole counsel for the Labour Party (where the other teams were led by silks) in a libel case of national prominence (and the most high profile ever to involve the Labour Party) in which a BBC presenter and several former staff claimed libel against the Party for the Party's rebuttal of antisemitism allegations broadcast on an exceptionally high profile Panorama edition on BBC One.

Other significant defamation cases have included defending the free speech of a trade union and political blogging site sued for a quote supplied for the former for the latter's article (subsequently identified in commentary as one of the top 10 libel judgments across common law jurisdictions of 2019). Another is now reported as a leading judgment on the approach to social media libel cases (involving a television celebrity suing in libel for a tweet).

Over recent years, he has also won very substantial damages in libel, privacy and harassment cases in sums extending well into six figures, alongside apologies, retractions,

and non-harassment undertakings, from defendants including the BBC, and nearly every national newspaper, as well as media and political figures. His successful clients include prominent journalists, activists, charity workers, business leaders, NGOs, a TV station and a former Guantanamo detainee. See the bullet points at the foot of this section and his news articles for more details.

Non-libel privacy cases have included acting for a journalist who won substantial damages in a sensitive phone hacking case from News Group Newspapers (the case itself is confidential).

As Standing Counsel to the Labour Party, he has acted and advised generally in relation to numerous defamation, privacy and data protection issues, often fast moving and of national political importance.

He has acted regularly on claims for defamation and harassment in industrial disputes on behalf of trade unions, activists and members, and non-traditional media. These cases have included defeating an attempt by a major construction group to obtain injunctive relief to gag Unite the Union in a major industrial dispute. He acted for the Morning Star and online news outlets in resisting a libel claim by a former senior police officer in connection with reporting of alleged collusion of police and construction companies in the scandal of the blacklisting of construction workers for trade union links. He also acted for Unite the Union in a ground-breaking libel and harassment claim, in which he seeks a representative injunction to prevent the harassment of trade union activists on social media during a major industrial dispute with British Airways.

Mediation

He has worked on mediations in media cases for both claimants and defendants, including acting at successful mediations in very high profile cases (details of which are confidential). He advises on all aspects of mediation, including identifying and instructing a mediator, negotiating the mediation agreement, preparing for the mediation, and representation during it. He is experienced in formulating a mediation strategy to obtain the best possible client outcomes, including outcomes which would not be available by another legal route, and in honing strategy and tactics while representing clients during the course of the mediation.

Claimant practice

He often works, pre- and post-publication, with solicitors to pre-empt, mitigate, and correct adverse or intrusive media coverage. He aims to achieve the client’s objectives without the need for litigation wherever possible, and to lay the best possible ground for litigation where it is impossible to avoid.

He is accustomed to dealing with urgent instructions, often against a backdrop of high national controversy and developing media attention, and to working with multi-disciplinary professionals on reputation management and communications strategy, and to litigating and advising in the context of wider strategy and the client's overall objectives and priorities.

He has extensive experience of advising on claims and prospective claims in the midst of a media storm. He also draws on his human rights practice running strategic litigation alongside public campaigns and communications strategies (such as winning settlement rights for thousands of Gurkha veterans by winning a test case challenge followed by the defeat of the Government in Parliament with the human rights award winning Gurkha Justice Campaign).

Although many of his clients must remain entirely confidential, they include prominent politicians (both in the UK and internationally), senior staff in political parties, trade unionists, broadcasters, charity and civil society leaders and activists, sports people, doctors, lawyers, and business leaders. He is also experienced in representing for-profit and not-for-profit companies in defamation claims, including against national newspapers. He also deals with defamation in the employment context. Examples of his work include advising Tony Blackburn in connection with the BBC's reaction to the Dame Janet Smith report in 2016 (its then Director-General announced the BBC was parting company with him) and his subsequent return to the airwaves (the BBC announced Mr Blackburn's return to BBC Radio 2 six months later).

Defendant practice

Mark has an extensive defendant practice, often acting on behalf of non-traditional newspapers, online news and new media, trade unions, politicians and political parties, bloggers, activists, and other individuals who are threatened or sued because of what they have said in the mainstream media, on websites and social media, and in print. They are frequently sued for their speech on issues of current controversy, and he defends their freedom of expression against claimants who range from broadcasters and celebrities to major corporations.

He also acts for defendants in breach of confidence, misuse of private information, breach of confidence, data protection, and intellectual property claims. He advises people who are involved in media investigations or considering giving quotes or interviews to the media about defamation and other litigation risk, such as advising a UK Olympic athlete on any defamation risk from contributing to and going on the record in a major media investigation.

Elections and campaigns

He has advised on media law in elections and campaigning. In addition to his work as Standing Counsel to the Labour Party, he has acted for individual candidates during elections, including on instructions to seek urgent interim relief to take down false statements published in breach of election law. He has acted for political parties and politicians to enforce broadcasters' compliance with their election coverage obligations, including urgent regulatory complaints. He has also acted in defamation and data protection claims about statements made during election campaigning (such as acting on behalf of a Labour councillor against a former Conservative MP seeking re-election for a leaflet he published in the 2019 General Election campaign falsely claiming that she supported a local tower block development).

Media regulation and enquiries

He acts and advises on complaints and proceedings on media regulation, including the Ofcom Broadcasting Code, the BBC Editorial Guidelines (and the intersection of the BBC's complaint process with Ofcom regulation of the BBC), and the Editors' Code of Practice.

In the leading authority on Article 10 duties on broadcasting regulators, he acted for the journalist and broadcaster Jon Gaunt in his judicial review of Ofcom. The case established that individual journalists, broadcasters, and presenters criticised in Ofcom rulings for their speech on TV and radio can challenge Ofcom under Article 10 even if the ruling has been accepted by the broadcast company licensee. He acted in the subsequent case in the European Court of Human Rights, challenging Ofcom's scope to rely on offensiveness to the broadcast audience as a basis for adverse rulings that interfere with political speech.

He also acts for journalists and broadcasters affected by regulatory and other media investigations and enquiries, such as the BBC's Dame Janet Smith Inquiry, dealing with defamation, privacy, data protection, contractual and procedural fairness and other public law related issues.

Public law, governance, standards, and disciplinary cases

He regularly acts in free speech and privacy challenges in public law and governance cases. Article 10 cases include acting as lead counsel for Cllr Heesom of Flintshire County Council in his High Court appeal against the standards penalty imposed by the Public Services Ombudsman for Wales (who defended the appeal with a silk led team). He won a finding that the penalty on Cllr Heesom for his strong speech criticising council officers was a disproportionate interference with freedom of expression. The judgment is a leading authority on the Article 10 rights of elected representatives penalised under public standards codes for their speech, and it establishes the very wide scope of speech falling within political expression and that all political expression is entitled to the same enhanced protection under

Article 10.

In the ground-breaking breach of confidence and Article 8 judicial review of S, he defeated the Home Secretary's case that breach of confidence could not be claimed outside private law proceedings. The High Court was persuaded to award unprecedented relief for breach of confidence, and its judgment further developed the public law obligation to respect confidential information fashioned from Article 8 privacy rights.

Reporting restrictions

He advises and acts in reporting restrictions cases, including for clients seeking orders preventing their identity and other sensitive information about themselves and witnesses from being disclosed by the media in courts including the Upper Tribunal, the High Court, and the Court of Appeal.

He also sat on the Administrative Court's Working Group on Anonymity and Reporting Restrictions, which considered procedures for applications for anonymity/ reporting restrictions to balance the rights of litigants and of the media.

Direct access

This is an area in which he will provide pre-litigation advice and act as counsel in litigation on a direct access basis, instructed either directly by the end client or by intermediaries as appropriate. His clerks will happily discuss possible instructions on this basis.

Significant Defamation Claimant Wins

His successful defamation claims (and associated harassment, privacy and data protection claims) include:

- *Julie Burchill* (Telegraph columnist and established media personality) paid substantial damages to journalist Ash Sarkar in her libel and harassment claim, entered a non-harassment undertaking, and published a widely read statement on Twitter and Facebook in which she *"unreservedly and unconditionally apologise[d] for the hurtful and unacceptable statements"* which were defamatory of Ms Sarkar and *"included racist and misogynist comments regarding Ms Sarkar's appearance and her sex life"*, and *"play[ed] into Islamophobic tropes"*. The claim under the Prevention from Harassment Act showed how Islamophobic speech was not protected by Art 10.

- *The Times* paid £30,000 libel damages to former Guantanamo detainee Moazzam Begg and the grassroots advocacy organisation CAGE as part of a comprehensive legal settlement of their libel claims about a *Times* article published in the aftermath of the 2020 Reading terror attack headlined *"Campaign group helps Reading suspect"* in which The Times falsely claimed that CAGE *"has backed the Reading attack suspect"*. It admitted libel of Mr Begg and published a statement confirming it had paid damages and apologising to them both for suggesting they *"were supporting the individual suspected of the Reading knife attacks of June 20, 2020, and that they were excusing his actions by reference to failings by the police and others"*. It also admitted that it *"wrongly stated that they refused to comment on their involvement with the suspect"*. *The Times* contended that CAGE was a company which had to show 'serious financial loss' to meet the serious harm test, but CAGE successfully argued that this was not intended to apply to not-for-profit organisations.

- Four national newspapers, *The Times*, the *Telegraph*, the *Mail*, and the *Express* – paid very substantial damages (plus costs) to a Muslim Scout Leader Ahammed Hussain for allegations linking his Scout group to extremism. *The Times*, the last to settle, paid substantial damages accepting that its article had a *"false and defamatory meaning [under] s.1 of the Defamation Act 2013"* (the serious harm test) that: *"The Claimant had…promoted extremist Muslim ideology at the Scout group…; The Claimant had a longstanding history of links with antisemitic individuals and organisations [with] strong grounds to suspect that he himself was antisemitic", and that there were "grounds to investigate whether…criminal offences [had been] committed by the Claimant in the way [he] had run the Scout group".* The *Telegraph* made a statement *"that Mr Hussain has never supported or promoted terrorism, or been anti-Semitic" and it "now accept[ed] that the article is defamatory of Mr Hussain and false and apologise[d] for the distress caused to him in publishing it [and] have agreed to pay him damages and costs"*. The *Mail* admitted that he had not been investigated by police and *"he was not promoting any extremist views while involved with the Scout Group and that he is not an anti-Semite and has not associated with extremist groups"* and the Express (for the Daily Star) admitted having *"made several allegations against Ahammed, including of extremist speech and of inviting a banned preacher to the Mosque"*, but now *"accept[ed] that there was no truth in any of these allegations"*.

- *The Times* admitted defamation and paid damages to Imam Abdullah Patel for allegations of extremism that *The Times* made against him after he challenged the Conservative Party leadership candidates during the 2019 BBC televised debate, forcing all of them, including the present Prime Minister, to agree to

hold an inquiry into Islamophobia in the Conservative Party. *The Times'* 'exposé' started on its front page headlined *"Tory candidates threaten BBC debate boycott"* and directed readers to an investigation of the *"Cleric's history of controversy"* inside the paper. In the face of the Imam's defamation claim, *The Times* conceded that it had defamed him *"by suggest[ing] that he was excusing or explaining acts of terrorism"* based on the untrue claim that he *"sought to blame Israel and the West following the murder of a British police officer by an Islamist terror suspect"* and had further defamed him by alleging (also untrue) that he had *"run a primary school which had followed a policy of segregating parents at events, which had been criticised by Ofsted"*. *The Times* published an apology retracting these allegations and confirming it had paid damages and costs.

- Six newspaper groups (*The Times/Sunday Times*, the *Sun*, **the** *Mail***,** the *Telegraph*, the *Express*, and the *Mirror*) published retractions and apologies and paid an extremely high total in damages for allegations of an Islamist 'Trojan Horse' plot to take control of Clarksfield Primary School in Oldham in Greater Manchester and convert it to a separatist Islamic ethos made against Nasim Ashraf (a former parent governor) and Hafizan Zaman (a parent of a former Clarksfield pupil). The allegation was first published as a Sunday Times front page splash headlined *"Revealed: new 'Trojan Horse plot' - Head teacher fears for her safety"* and then picked up by almost every other national newspaper, all of whom ended up apologising and paying damages and costs for having done so. These included *The Sun* confirming it had paid "substantial damages and their legal costs" and it recognised that claims of a Trojan Horse plot *"involv[ing] violence and threats [and] that Mr Ashraf held Islamic teaching sessions, and Mrs Zaman told staff to wear the veil"* were all *"allegations [that] are unfounded, and they were not involved in any alleged Trojan Horse plot"*.

- **The** *Henry Jackson Society* (a high level trans-Atlantic security think tank) paid libel damages and legal costs to settle a High Court defamation claim by television channel Huda Television (aimed at the British Muslim community) and published a retraction of the allegations and an apology for claims in its report titled*?"Extremism on the Airwaves: Islamist broadcasting in the UK"* that the *"channel regularly publishes content containing Islamist extremist subject matter"* and as a result *"should have faced greater regulatory scrutiny"*.

- The *Sunday Times* published a retraction and apology and paid out a large sum in costs to settle a long running libel claim by Cllr Nesil Caliskan, the Labour Leader of Enfield Council, (who had just been elected the first female Muslim Council Leader in the

country, the first ever female and BAME, and the youngest ever leader of Enfield). The Sunday Times had published a purported 'exposé' headlined *"Enfield Labour council 'taken over' by clan"* which wrongly suggested that Cllr Caliskan was guilty of nepotism in appointing "*her own mother*" to the cabinet. In its published statement apologising to Cllr Caliskan following the settlement, the Sunday Times admitted that her mother had been elected to the Cabinet by secret ballot and Cllr Caliskan's role was limited to choosing for her mother the same portfolio she had held in the previous administration.

- *The Times* admitted libel and published a statement apologising and agreeing damages to Sultan Choudhury OBE, the former Chief Executive of Al Rayan Bank, for a preview article on *The Times* website headlined *"Female Circumcision is like clipping a nail, claimed speaker"* which was accompanied by a photograph of Mr Choudhury. Only the full article behind the paywall (and in the print edition) made clear that Mr Choudhury was not the speaker. *The Times* sought to argue that the Internet reader of the preview article who lacked a subscription to the paywall site was the equivalent of someone browsing the headlines at a newsstand without paying for the paper and that the free to view preview article carried no freestanding meaning under libel law. Mr Choudhury saw off this attempt with *The Times* conceding that the preview article conveyed a different – defamatory - meaning to the ordinary Internet user without access to the paywall site that he *"holds abhorrent extremist views by condoning Female Genital Mutilation"*.

- *The Telegraph* published a retraction and apology and paid £62,500 in costs to UK Imam and Scholar Dr Haitham Al-Haddad to settle a three-year libel battle over the *Telegraph's* false claim that he preached that Jews were descended from apes and pigs: the *Telegraph* withdrew and undertook not to repeat. In related litigation, the BBC also withdrew a similar allegation against the Sheikh made by its presenter Andrew Neil on live TV on BBC One's *This Week*, and undertook not to repeat it.

Data Protection and Information Law

Mark specialises in data protection claims. He has been in the vanguard of using data protection rights in tandem with defamation to win redress for inaccurate publications by national media organisations and high profile individuals, and he is expert in the intersection of data protection law and defamation.

He has achieved damages from most national newspapers/broadcasters in sums extending well into six figures in claims incorporating data protection breaches with defamation (and misuse of private information and harassment by publication). His clients range from prominent journalists to a former Guantanamo detainee.

Privacy centred cases have involved data protection breaches alongside breach of confidence, misuse of private information, and breach of copyright and other intellectual property claims such as passing off.

His defendant work in data protection cases has incorporated prominent High Court cases.

His expertise in the interpretation and application of the GDPR draws on his expertise in the interpretation and application of retained EU law, including multiple appearances as lead counsel/advocate in the Grand Chamber of the Court of Justice. His expertise in media related data protection cases extends to the media regulation codes recognised in the Data Protection Act 2018.

As Standing Counsel to the Labour Party from 2019, his responsibilities included advising on data protection/ GDPR compliance issues in a fast moving and high pressure political environment. He has advised and acted for some of the biggest and most influential trade unions on data protection obligations in their operations and campaigning, including on compliance with data protection and electronic marketing laws during election campaigns.

He advises and acts for clients using data protection legislation, both to obtain data, and to challenge the disclosure of data. His instructions in this area are often confidential but have included advising major figures on using data protection rights to prevent release of personal information without their consent, including in response to media investigations, and challenging apparent leaking of personal information in the context of actual and contemplated high profile disciplinary proceedings.

In addition to his media and communications practice, he is often called upon to advise on data protection issues arising in leading cases in other spheres, such as his work acting for bereaved and survivors on phase 1 of the Grenfell Tower Inquiry.

Data protection and information law also feature heavily in his public law work, including the public law obligation to protect confidential information, together with public authorities' duties, under public law and Article 8 to consult those affected prior to releasing sensitive information.

He has been involved in some of the leading cases on the duty of candour and disclosure and information rights in judicial review and tribunals. He has won ground-breaking disclosure

orders in judicial review, developing the law on disclosure against public authorities in public law cases, often argued in tandem with data protection arguments. Cases include **Babbage**, which is an important authority on government ministers' duty of candour and disclosure in judicial review, and **Limbu**, the seminal decision that overturned the Government's refusal to permit Gurkha settlement.

His case of **S** expanded the public law duty on public authorities when considering release of non-public and sensitive information. It established that a public authority could be liable for the disproportionate release of information, even where it did so in court proceedings in purported compliance with its duty of candour.

He has also tested the rights of individuals to obtain orders from domestic courts for disclosure and information about confidential steps in EU infringement proceedings in which they have an interest.

He acts in applications concerning anonymity of litigants and witnesses and whether the publication of evidence should be prohibited.

He has also conducted specialist training on freedom of information and data protection.

This is an area in which he may be able to accept instructions on a public access basis in appropriate circumstances (on which his clerks will advise).

Administrative and Public Law

Judicial review and public law are at the core of Mark's practice, covering areas such as freedom of expression, treatment of confidential information and personal data, unlawful detention and detention conditions, expulsion cases, Public Sector Equality Duty, community care, commercial judicial reviews, retained EU law, and the Human Rights Act. His cases have dealt with cutting edge topics such as entitlement to disclosure and oral evidence in judicial review, and the circumstances in which the Court can determine issues of fact on judicial review. He is experienced in litigating private law causes of action in judicial review proceedings and in the transfer of claims from the Administrative Court to the QBD/ County Court. He also deals with practice and procedure on the Administrative Court Users Group, where he has represented ILPA for several years. Amongst the matters in which he was involved was achieving changes to crucial Administrative Court guidance for determining inter partes costs issues. He also sat on the Administrative Court's Working Group on Anonymity and Reporting Restrictions.

Leading cases include **Heesom**, which considered the proportionality of punishing political expression in order to maintain standards in public life. The High Court quashed the penalty imposed by the Adjudication Panel as a disproportionate interference with freedom of expression under Article 10. It gave guidance on interpreting local authority codes of conduct compatibly with Article 10. It considered the relationship between councillors and officers, and the requirement of mutual trust between them. It established that there was no hierarchy of political expression and that all political expression was entitled to the same enhanced protection, and further that the scope of political expression was wide enough to cover disputes about the selection processes for appointing impartial public officials. It considered the test for a finding of bullying and the circumstances in which promoting a constituent's case could amount to improper involvement in the decision-making process and bring the local authority and the office of councillor into disrepute. It also dealt with the standard of proof in regulatory proceedings involving elected politicians, and with the approach of the Administrative Court on a statutory appeal which was not limited to appeal on the law. The Welsh Government exceptionally applied for and was granted permission to intervene in a statutory appeal in order to explain its approach to imposing local government standards.

Another leading freedom of expression case in public law was **Gaunt**, which established the standing of individual journalists to judicially review Ofcom under Article 10, even where the broadcasting company accepts the ruling. It also considered the role of the Court when hearing a challenge to Ofcom under the Human Rights Act.

Other leading cases include **Babbage**, one of a series of ground-breaking judicial reviews in which he has acted dealing with rights to disclosure and cross-examination of witnesses in human rights and other judicial reviews where the Court is not limited to secondary review. A series of disclosure applications, orders and hearings which ultimately involved GLD being separately represented by a silk ended in the Court delivering a judgment making unprecedented criticism of GLD and giving detailed and emphatic guidance about duties of candour and compliance with disclosure orders of the Administrative Court, and the procedure the Government must follow where it resists disclosure (including *"what are, in truth, elementary principles of constitutional law*"). Earlier cases included **Ahmed** in which extensive orders were obtained against the Home Secretary for disclosure of UK-Iraqi negotiations and orders for cross-examination of Home Office and FCO officials. The repeated applications and orders required to compel full disclosure led the Court to grant Mr Ahmed's application for indemnity costs of making them. The judgment is **Babbage** is also a leading authority on unlawful justification of executive detention by reference to steps to initiate criminal prosecution and unlawful prosecution for refusing to leave the UK voluntarily (see also under *Actions against Public Authorities*).

Other cases have included a landmark Court of Appeal ruling on the Home Secretary's duty of candour when defending her decisions in the First-tier Tribunal and Upper Tribunal, **UB (Sri Lanka)**.

His judicial review of **Fakih** ruled unlawful the Home Secretary's No Recourse to Public Funds policy, which impacts on vulnerable migrants including families and on local authorities around the country. It held that the Home Secretary had failed to obtain the necessary Parliamentary approval and had breached her Public Sector Equality Duties in formulating the policy. He also acts in ground-breaking judicial reviews addressing the way in which the Home Secretary operates and enforces contractual arrangements for out-sourced asylum support and identifying public authorities' non-delegable duties when functions are out-sourced.

The case of **S** established that a breach of confidence claim could be made by judicial review, and developed public law principles of good administration in respect of private information capable of harming the claimant. The case considered whether and how a public authority could rely on its duty of candour to disclose a person's confidential information in a judicial review in which he was not involved, and the processes including consultation that were required. It established that decisions to release information in such court proceedings could be challenged by way of a separate claim for judicial review. It required the Court to consider the conduct of the Treasury Solicitor in releasing the information and to consider the Attorney General's personal explanation of that conduct.

Limbu, brought on behalf of thousands of Gurkha veterans, is one of the most important judicial reviews of the 21st Century in terms of its impact. It began as a judicial review seeking disclosure of extensive Home Office and MOD internal documents, which ultimately assisted in demonstrating that Nepal had no objection to Gurkha settlement and led to the policy barring Gurkha settlement being finally ruled unlawful after many years of unsuccessful litigation and campaigning. The claimants applied again to the Court contending that the Home Secretary had failed to comply with the judgment and the order. This application was conceded, and together with unprecedented public and parliamentary support, ultimately led to the Government's defeat in the House of Commons and its subsequent agreement to work with the claimant's team to remove the bars to Gurkha veterans settling in the UK.

He won a declaration of incompatibility in **Nasseri** in relation to a key plank of Government asylum legislation which was ultimately set aside by the House of Lords which nevertheless gave important guidance on the role of the Court in determining whether to make a declaration of incompatibility in respect of Article 3 and its duty to determine the facts notwithstanding the primary legislation incorporating a deeming provision in relation to those

facts.

Other leading judicial reviews include **Khadir**, a leading authority on statutory detention powers in which the Home Secretary persuaded Parliament to enact legislation purportedly to reverse the judgment of the Administrative Court, and the House of Lords expressly reserved its position on whether the Court of Appeal's acceptance of the retrospective effect of this legislation depriving him of his judgment violated constitutional principles of access to the Court. He also acted in **Rudi**, in which the House of Lords accepted that the common law principle of equality/ non-discrimination provided similar protection to Article 14.

He acted in the judicial review in the Administrative Court, and then in the Court of Appeal and CJEU in **NS** (known as **Saeedi** in the Administrative Court). NS contended in the Administrative Court and above that the EU Charter of Fundamental Rights was binding on the UK (contrary to claims from a previous Prime Minister and Lord Chancellor to have achieved an opt out for the UK). The Grand Chamber's ultimate agreement had wide ramifications for public law. He also acted as lead counsel in the judicial review and reference to the CJEU in **McCarthy**, in which the Grand Chamber rejected the Administrative Court's conclusions and held that the UK may not rely upon assessments of systemic threats to its borders in order to suspend free movement rights. The Attorney General, leading the UK's legal team in Luxembourg, said that "the issues are of exceptional importance from the perspective of the UK".

His commercial judicial review work includes acting for employers challenging sponsor licensing decisions by the Home Secretary and higher education providers challenging decisions about designation of their higher education courses for student loan funding by the Secretary of State for Education, raising issues from procedural fairness to the protection of property under Article 1, Protocol 1, ECHR and the right to education under Article 2, Protocol 1 to the Public Sector Equality Duty.

Asylum and General Immigration

Mark has acted in many leading asylum and immigration cases since the mid-1990s in the UK and Europe. His work ranges from bringing test cases, with thousands of refugees and migrants dependent on the outcome in the UK and Europe, to advising confidentially on particularly sensitive asylum applications (asylum clients have ranged from politicians to international business leaders to media celebrities). He also advises high net worth individuals on alternative routes to settlement such as investor and entrepreneur applications, and on options to enter and remain in the UK for business, employment, and personal

purposes, including PBS applications and particularly sensitive business and personal visitor applications. He is experienced in dealing with commercial and business cases (see under *Immigration – Business and Commercial*) and with litigation at all levels of appeal and by judicial review in the Administrative Court and the Upper Tribunal.

In addition to litigation, his deep understanding of immigration law, policy, and practice derives from his work on immigration policy issues since the 1990s, including as one of the longest ever elected members of the Executive of the Immigration Law Practitioners Association (ILPA) and on stakeholder groups of Immigration and Asylum Chambers of the First-tier and Upper Tribunals and the Administrative Court. He also acted as expert adviser to the Immigration Services Commissioner and his book, the Best Practice Guide to Asylum and Immigration Appeals, was distributed to all immigration practitioners nationally by ILPA and the Immigration Services Commissioner. The newly revised 2021 edition of the **Best Practice Guide to Asylum and Human Rights Appeals** co-authored with Alison Pickup and Rowena Moffatt is published online and free to use.

He is expert in retained EU law and asylum law and litigation. He has provided high level advice on the implications of Brexit for future migration policy. He is also expert in procedures and presentation of cases in the CJEU and in disputes over giving effect to the judgment following its return to the domestic courts.

He was lead counsel in the landmark free movement case of **McCarthy**, in which the Grand Chamber rejected the UK's claim that the Frontiers Protocol to the Lisbon Treaty gave it an opt out from relevant free movement law, and held that the UK was not entitled to rely upon its concerns about systemic fraud in order to withdraw the right of free movement of third country family members of EU citizens to enter the UK visa-free. In another free movement case in which he acted as lead counsel in the Luxembourg court, **Onuekwere**, the CJEU clarified the effect of imprisonment on the right of EU citizens and their family members to permanent residence in EU Member States, and the rationale for the status of permanent resident.

Mark acted as lead advocate presenting the applicant’s successful submissions in the Grand Chamber hearing in the most important EU law asylum case, **NS**, which established the precedence of the EU Charter of Fundamental Rights over mutual trust between Member States in the Dublin system for determining responsibility between Member States for processing asylum seekers. It affected tens of thousands of asylum seekers across the EU, and forced revision of the EU’s Dublin legislation.

Prior to the Grand Chamber proceedings in **NS**, Mark acted in a series of test cases at all levels of domestic courts from 2005 which largely prevented the Home Secretary from

transferring asylum seekers to Greece under the Dublin system in the face of the risks that were subsequently accepted to be real. After the Court of Appeal accepted that the issue required reference to the CJEU, the Home Secretary ultimately conceded NS's application for general relief, and agreed to consider all such asylum claims substantively including new arrivals and the 1300 cases stayed behind the litigation. At an earlier stage in the litigation, he won the first declaration of incompatibility under the Human Rights Act in respect of asylum legislation in **Nasseri**. It was ultimately set aside by the House of Lords in 2009 which nevertheless established that the Administrative Court must decide for itself on the facts whether a Dublin transfer placed a claimant at real risk, notwithstanding domestic legislation 'deeming' EU members state to be safe.

Earlier cases about removal of asylum seekers to EU states included **Aitsegeur**. The Administrative Court's judgment was the first in which the High Court accepted that an EU Member State (France) was unsafe because its courts had not properly interpreted the Refugee Convention under international law. The Home Secretary's appeal was ultimately dismissed by the House of Lords which held (contrary to the Home Secretary's position) that the Refugee Convention had a single autonomous meaning that domestic courts were obliged to ascertain, instead of simply asking whether a foreign court's interpretation was a reasonable one.

He is also expert in dealing with cases in Strasbourg, including applying for urgent rule 39 interim indications to stay removal. Cases in the European Court of Human Rights include **Paulet**, in which the confiscation under the Proceeds of Crime Act 2002 of the earnings of a migrant without the right to work was held to violate Mr Paulet's right to peaceful enjoyment of property under A1, P1, the first ever such successful challenge in Strasbourg. Other cases include acting in the domestic courts and Strasbourg in the landmark case of **Bensaid**, which held that risk of treatment in the receiving state which did not breach Article 3 could nevertheless render expulsion contrary to Article 8 (in that case because of the impact on mental health). It was key to the House of Lords ultimately establishing that treatment in the receiving state that engaged Convention rights other than Article 3 could render expulsion unlawful under the Human Rights Act.

Leading cases in domestic courts include **UB (Sri Lanka)**, a landmark case on the duty of candour, with wide ramifications for asylum appeals, in which the Court of Appeal ruled that the Home Secretary is required to produce to judge's relevant country information which could assist the asylum seeker. In its judgment, the Court **"delineate[d]… the clearest obligation on the Secretary of State to serve relevant material and ensure it was before the Tribunals at both levels"** and **"deprecate[d] any suggestion that this obligation of service is displaced or diminished by the availability of the material online"**,

emphasising the number of asylum seekers unrepresented or whose lawyers are **“less than optimal”**.

Significant cases in domestic courts include **AN (Afghanistan)** on the test for exclusion from the Refugee Convention for war crimes and crimes against humanity. The Court of Appeal rejected the Home Secretary’s attempt to reinstate a lower standard of proof than balance of probabilities and, while it dismissed the appeal by reference to its complex procedural history, the Court of Appeal reacted to AN’s submissions on substantive international criminal law by expressly declining to endorse the interpretation of that had been upheld by the Upper Tribunal. It further rejected the Home Secretary’s “important jurisdictional” objection to the Upper Tribunal having reconsidered asylum at all since the Court had remitted the appeal just on Article 3 grounds. The Court of Appeal accepting AN’s case that the Upper Tribunal had jurisdiction to enlarge the scope of the matters remitted to it by the Court of Appeal in the absence of an order prohibiting this or an abuse of process.

Mark is expert in using court procedures to test Home Office claims about the viability and safety of proposed routes and methods of expulsion, involving applications for complex disclosure and further information about inter-governmental communications, and cross-examination of Home Office and Foreign Office officials. In **NS** (above), the Administrative Court ordered extensive disclosure of communications with the Greek authorities, and it made extensive findings of fact about conditions in Greece.

CM (Zimbabwe) is a leading authority on the Home and Foreign Secretaries’ disclosure and candour duties in asylum and Article 3 expulsion appeals, including Country Guidance cases. It is also the leading authority on the appointment of a Special Advocate or PII Advocate to deal with Public Interest Immunity issues, the first appointment of such an advocate having been made by the Upper Tribunal in **CM**. That appointment followed earlier proceedings in which the Court of Appeal quashed a Country Guidance determination based on the Home Secretary’s admission of material disclosure failings which was in turn established by unprecedented disclosure orders from the Court of Appeal against the Home and Foreign Secretaries, themselves sought and obtained on the basis of concerns about disclosure and candour failings by the Home Secretary in the Upper Tribunal (**JG and CM (Zimbabwe)**).

Before that, he conducted a series of Zimbabwean test cases in the Upper Tribunal, Administrative Court, and Court of Appeal over several years on which thousands of Zimbabwean claimants depended, and which established, for a substantial period, that Zimbabwean asylum seekers were entitled to refugee status unless they were aligned with the Mugabe regime (**RN**).

He also acted for Liberty in their public interest intervention in the House of Lords in **RB, U, and Othman** on the use of Special Advocates, disclosure and closed procedures in SIAC, and the use in SIAC appeals of evidence obtained through torture was addressed in **A No. 2** in which he acted for Amnesty, Human Rights Watch and 12 other organisations in their public interest intervention.

Other leading authorities include **Babbage**. It established that the Home Secretary could not continue to detain detainees to seek their prosecution for failing to co-operate with removal, and it held that deportees cannot be prosecuted for refusing voluntary return to countries where deportation cannot be enforced. It was the first case in which the High Court held that the Home Secretary had no realistic prospect of persuading the Zimbabwean Government to issue travel documents for enforced removals, and that the Home Secretary therefore could not detain Foreign National Offenders to prevent them absconding and offending, regardless of what risk she said they posed. The case involved multiple applications and orders for disclosure of communications between the UK and Zimbabwean Government, and unprecedented condemnation in the judgment of disclosure and candour breaches and the firmest of guidance as to future compliance.

Ahmed, the lead case about the failed attempt to enforce the first mass removals by special charter flight into Baghdad, also involved multiple disclosure orders, and exceptional orders for cross-examination of officials in the Administrative Court. His cases have also led to significant concessions in respect of the rights of detainees to lawyers and access the Court prior to removal, and effective intervention for those claiming to be children in age dispute cases. Leading authorities on immigration detention include **Khadir** in which the House of Lords established the basis of the power to detain asylum seekers and migrants and put them on temporary admission (as opposed to giving them leave to remain), and the legal basis of High Court immigration detention challenges. (See also under *Actions Against Public Authorities*).

His case of **Fakih** was the first judicial review in which the Upper Tribunal (Immigration and Asylum Chamber) granted general relief, ruling unlawful a major plank of Home Office immigration policy, the No Recourse to Public Funds (NRPF) policy governing leave under Article 8. It held firstly that the policy included an immigration rule and the Home Secretary had introduced it without the necessary Parliamentary approval and secondly, that it breached her Public Sector Equality Duty in respect of disabled claimants under the Equality Act. Decision-making was suspended while the policy was revised and a new Policy Equality Statement published, and he has acted in further cases in the Administrative Court and the Upper Tribunal dealing with the revised policy and whether the Home Secretary has done enough to remedy her breach of the PSED. He has been involved in numerous cases about

asylum support. He acted for the charity Refugee Action in **MK**, which established that the Home Office policy of failing to provide asylum support pending a subsequent asylum claim was unlawful, and he has acted in a number of cases testing systemic defects in out-sourced contractual arrangements. (See also under *Community Care*)

The case of **S** resulted in an unprecedented judgment of the High Court that the Home Secretary must return an asylum seeker to the jurisdiction, despite him having been lawfully removed, because the Home Secretary had breached her duty of confidence to him after his removal and placed him at risk. The case involved the duty of confidentiality to asylum seekers in domestic, EU and international law, and the conduct of GLD in other proceedings (information had been wrongly disclosed by GLD in a test case challenging a charter flight removal to Sri Lanka, which had led to the claimant being featured on the Sri Lankan President's website). He has been involved in other cases in which the Home Office was ordered to take steps in a foreign country to achieve the return to the UK of claimants who had been unlawfully removed, and with seeking and enforcing such relief on an urgent basis.

The British Army Gurkha challenge, **Limbu**, forced the reversal of the Government's policy of preventing Gurkha veterans settling in the UK and led to thousands winning the right to do so. The cases were originally brought as representative appeals in the Asylum and Immigration Tribunal, and reached the Administrative Court through judicial review of the Tribunal's decision that it could not order extensive disclosure. The Administrative Court decided to retain the substantive case due to its importance and to ensure full disclosure was made by the Government.

He regularly deals with cases involving children, relying on duties arising from domestic legislation, EU law, the ECHR, and the UN Convention on the Rights of the Child, including age disputed children and detention challenges. He acted for a 10 year old child who attempted suicide in detention in a case which attracted national media attention to the detention of children. Other cases included Rudi, the test case in the House of Lords on the exclusion of unaccompanied minors from the Home Office's family amnesty.

Equality and Discrimination

Mark deals with discrimination and equality issues across his human rights, public law, and governance work. He is also heavily involved in campaigning on these issues beyond his casework.

He has acted on equality/discrimination based challenges to policies, processes, practices and individual decisions of local authorities and government ministers, particularly involving disabled people, children, and migrants and refugees, and often involving the Public Sector Equality Duty (PSED).

Cases on the PSED have included winning the first ruling that the Home Secretary's No Recourse to Public Funds (NRPF) policy was unlawful by reason of failure to consider the needs of disabled people when formulating the policy (**Fakih**). The judgment also established a separate breach of the PSED in the decision-making process arising from the Home Secretary's failure to initiate adequate enquiries into whether the claimant was disabled and the impact of any disability.

Mark acted in a number of cases following on from **Fakih** testing the Home Secretary's response to the unlawfulness found in that case and identifying further breaches of equality law in respect of different protected grounds.

Other PSED cases range from education to community care and asylum support. He has also acted in and developed successful and ground-breaking PSED challenges to government's duties under the PSED when it has contracted out critical public services, including the application of the PSED when negotiating, operating and enforcing contractual arrangements with commercial providers, and identifying the public authority's non-delegable duties.

Leading cases involving Article 14 and the common law principle of equality include **Limbu**, which ended the exclusion of Gurkhas from the right of settlement granted to other foreign national British soldiers. That judgment relied on Mark's House of Lords case of **Rudi** for the importance of the common law principle of equality/non-discrimination, alongside the ECHR principle in Article 14, making "clear ... that the common law and Convention principle essentially walk hand in hand together".

Beyond casework, he has presented on equality issues and chaired one of Doughty Street's seminars to mark the 10th Anniversary of the Equality Act in 2021.

Mark is particularly active in campaigning on disability issues. He is an elected Board Trustee of the Spinal Injuries Association (SIA), and from 2021-2023 served as Senior Vice Chair and Chair of the Programmes Committee, overseeing the progress and development of SIA's work on campaigns, advocacy and services, including parliamentary and campaigns strategy.

SIA is the leading national charity working for people who experience spinal cord injury (SCI), often causing paralysis, and nearly always life changing. It has around 55 staff nationally providing services and advocacy to support and empower SCI people to rebuild their lives and overcome disability discrimination. It supplies essential support, services and advocacy,

and is also a leading authority on SCI research and learning, supplying education, training and expertise on SCI to healthcare and rehab professionals, campaigns and charities. Its user led experience and expertise is deployed to inform and influence decision makers, and the design and delivery of services for SCI people nationally. As a Disabled People's Organisation, representing 50,000 people with SCI in the UK, many of whom are wheelchair users, SIA is passionate about campaigning for disabled rights, collaborating with other DPOs and disability campaigners in NGOs, trade unions, business, and civil society.

He has sat on the Bar Council Disability Panel since 2021 and on the Bar Standards Board Disability Taskforce since 2022, and is the Chair of Doughty Street's Disability Working Group.

Earlier Bar Council work includes serving on its Equality Code implementation committee which was responsible for adding sexual orientation to the protected grounds in the Equality Code. He was one of the founders of the Bar's LGBT+ group, BLAGG.

He is also active in ParaPride which campaigns on the intersection between disability and LGBTQ rights, and in Doughty Street's LGBTQ+ section, Outy Street.

Public Inquiries

Mark acted for 66 core participant survivors and bereaved in Phase 1 of the Grenfell Tower Inquiry, established by the Prime Minister to investigate the events of the fire on 14 June 2017 and the causes and contributions to the loss of 72 lives.

His public inquiry work draws on his expertise in examining the conduct of public authorities through leading public law cases dealing with regulation and governance, and several leading cases on the duty of candour of ministers and public authorities in the Court of Appeal and the High Court, addressing their duty of candour in both the higher courts and the First-tier and Upper Tribunal. His cases have expanded boundaries in the disclosure of internal governmental deliberations, and he is accustomed to analysing and assessing these. He is also experienced in dealing with Equality Act and public law discrimination issues, such as his ground-breaking work relying on the Public Sector Equality Duty in relation to contracted out public services, including housing services.

He has particular experience of the workings of local authorities. He was lead counsel in **Heesom**, the leading case on public standards codes governing the conduct of local councillors and the interaction of such codes with councillors' free speech right (against a silk led team for the Public Services Ombudsman). The case dealt with issues such as the limits

on free speech imposed by mutual trust between senior/ junior officers and members, limits on member involvement in decision-making involving constituents, whether issues like officer appointments involve protected political expression under Article 10, and common law sanctions available against members.

He also draws on his Media and Communications work, particularly his expertise in data protection (and retained EU law generally) and information law, ranging from judicial review proceedings involving data protection law and public law confidentiality obligations of public authorities through to numerous private law media/ data protection claims, and advising on complex and sensitive data protection, FOIA, and privacy (common law/ Art 8) matters, including about high profile inquiries.

He has also acted in leading cases on handling disclosure to which the Government objects on PII or other grounds. He was lead counsel in the leading authority on PII processes in country guidance cases (where the Upper Tribunal examines, and makes general findings on country conditions and risks to categories of claimants as well as determining the instant appellant's case). His case was the first to grapple with the process for a Special Advocate or PII Advocate to examine Government (largely FCO) disclosure in a closed process. He also acted at the highest level in appeals considering use of evidence in national security cases: acting for Liberty in **RB (Algeria)** on whether the Special Advocate procedure in terrorism cases in SIAC violated Articles 3 and 6 and common law constitutional principles, and for a coalition of NGOs in the internationally acclaimed case which held that evidence obtained through torture was inadmissible even in national security cases, **A No. 2**.

He also draws on extensive public affairs and policy experience on issues ranging from the rights of disabled people and their treatment to those of refugees and migrants. He is an elected Board Trustee of the Spinal Injuries Association, the leading UK charity for people living with paralysis, and served as Senior Vice Chair from 2021-2023. His work included overseeing services to spinal injured people, advocacy (largely to public authorities on care, housing, and health issues), and campaigns/ public affairs work including on disability rights and anti-discrimination measures and housing policy and building regulations on accessibility. Before that, he was the longest serving elected Board member of the Immigration Law Practitioners Association, promoting access to justice and a fair asylum and immigration system via briefing, evidence and advice to numerous Government, official, parliamentary and non-Governmental advisory groups, committees and inquiries, and representing ILPA on judicial and governmental stakeholder groups.

Community Care and Health

Mark has long experience of community care challenges to policies, processes, practices and individual decisions of local authorities and the Home Office, particularly involving disabled people, children, and migrants, refugees and asylum seekers. He is experienced in handling urgent cases, including test cases, and conducting emergency applications for interim relief on behalf of vulnerable claimants. He has conducted seminars on the procedures and tactics involved in urgent applications for interim relief. He addressed the LAG Community Care conference on using the right to human dignity in community care cases.

Leading cases include **Fakih**, in which the Home Secretary's No Recourse to Public Funds (NRPF) policy was ruled unlawful. By blocking access to benefits for migrants granted Article 8 leave, the policy has had major implications for the provision of community care by local authorities, those granted Article 8 leave being disproportionately vulnerable, and likely to include disabled people and families with children. The Home Secretary was held to have breached her Public Sector Equality Duty (PSED) by failing to take account of the support and accommodation needs of disabled people. The judgment also ruled that the individual decision-making process breached the PSED because of inadequate enquiry into whether the claimant was disabled and the impact of any disability. Following the judgment and a further application to enforce the order, the Home Office suspended decision making and amended its policy and produced a new equality impact assessment. Mark has been involved in several cases since challenging the new NRPF policy and the adequacy of the equality impact assessment carried out in response to the judgment.

He has also acted in a number of judicial reviews addressing the Home Secretary's responsibility for failure by contractors to supply out-sourced support and accommodation, including identifying systemic failings, non-delegable duties of government, and the application of the PSED to arrangements with contractors and procedures for addressing contractual breaches.

He acted as leading junior for a major charity Refugee Action in their intervention in **MK**, where it was successfully contended that the risk of Article 3 ill-treatment and breach of EU law meant that the Government's policy on asylum support for subsequent claims was unlawful. Other cases included establishing that asylum support appeals were covered by the fair trial guarantees in Article 6.

Beyond casework, he is heavily involved in campaigning on community care and health issues. He is an elected Board Trustee of the Spinal Injuries Association (SIA), most of whose members are paralysed and many of whom are support by community care or NHS Continuing Healthcare. As Senior Vice Chair and Chair of the Programmes Committee from 2021-2023, he oversaw SIA's services, including health and rehab services, its advocacy on behalf of members, especially relating to care and NHS services, and its public affairs work

on health and care issues.

Actions Against Public Authorities

Mark acts regularly in claims against public authorities. His significant unlawful detention cases date back to the mid-1990s, and he is very experienced in bringing such claims by expedited judicial review in order obtain release by interim or final relief, in litigating civil actions for damages for unlawful detention and consequent personal injury, and in the transfer of ongoing claims from the Administrative Court to the Queen's Bench Division or County Court (including resolving disputes over transfer).

He deals with issues of non-delegable duties of public authorities that have out-sourced their functions, including for the purposes of negligence. He also deals with damages claims under the Human Rights Act. He is experienced in bringing claims in the QBD and the Administrative Court on behalf of claimants outside the jurisdiction in respect of acts of Government carried out within and outside the jurisdiction, including ground breaking breach of confidence claims. These claims involve issues of conflict of laws and extra-territorial application of the Human Rights Act. He deals with the procedural and practical issues raised by trials in the QBD where the claimant is outside the jurisdiction.

He is expert in using CPR procedures to obtain disclosure and further information in order to test the defendant's factual claims, both in civil claims and by enforcing the enhanced rights to disclosure and cross-examination in the Administrative Court in unlawful detention claims. He is also experienced in ADR including mediation, settlement negotiations including Part 36 offers, and in costs issues (see under Costs and legal funding).

Civil claims brought in the QBD include **Tarakhil** in which the High Court ruled that detention was unlawful and awarded substantial damages, including aggravated damages and uplifts, based on public law errors in its decision making, failure to provide adequate explanations in evidence, and damages exceeding a previous Part 36 offer (Mark was interviewed about the judgment by **LexisNexis**).

His case of **Babbage** is a leading authority on the detention and prosecution of Foreign National Offenders (FNOs). It established that the Home Secretary's practice of using administrative detention powers to hold FNOs while she arranges for their prosecution is unlawful. It was also the first High Court authority to dismiss the Home Secretary's position that detainees who could not be deported could be prosecuted for refusing voluntary return (a judgment that led to the CPS abandoning prosecution of Mr Babbage's co-claimant shortly

thereafter). It further confirmed that likelihood of re-offending and absconding could not constitute a lawful basis for the detention of FNOs if the “acid test” of a realistic prospect of enforcing removal were not established. It was, in addition, the first case to establish in the High Court, on the evidence, that the Home Secretary had no realistic prospect of obtaining travel documents to enforce removals to Zimbabwe, so that she could not maintain detention of Zimbabwean FNOs without travel documents. The case involved multiple applications and orders for disclosure relating, inter alia, to communications with the Zimbabwean authorities, and unprecedented and firm criticism and guidance to GLD in the judgment about disclosure in unlawful detention claims, and assurances from GLD as to future conduct of disclosure in unlawful detention claims and payment of indemnity costs.

Ahmed, a test case on the lawfulness of detention of Iraqi FNOs following a failed attempt to enforce group removals by charter flight to Baghdad, involved Mr Ahmed winning extensive orders for disclosure of UK-Iraqi negotiations and orders for cross-examination of Home Office and FCO officials in the Administrative Court in order to test the prospects of removal and the history of such attempts. The sustained efforts necessary to compel full disclosure from the Home Office led the Court to grant Mr Ahmed's application for indemnity costs. The case subsequently settled following proceedings in the QBD. Other unlawful detention claims concerned with prospects of removal have considered whether the civil war with Islamic State undermined any realistic prospect of the Kurdish Regional Government accepting removals to Northern Iraq (which settled after the grant of permission and an order for disclosure of communications with the Iraqi and Kurdish authorities).

His cases regularly deal with treatment in detention in addition to lawfulness of detention, including the abuse of the power of solitary confinement as punishment rather than for security and control purposes, and whether continued detention of a mentally ill detainee who was on hunger strike breached Article 3. He also deals regularly with issues around the detention of children and procedural guarantees in detention.

Governance and Policy

Mark’s practice involves extensive governance, regulation, and policy work, from high profile cases to confidential high level legal, constitutional, procedural, regulatory and compliance advice.

This work draws upon his expertise in freedom of expression; defamation; media and communications; privacy; data protection and information law; election law; public standards and disciplinary codes; public, constitutional, and human rights law; procedural

fairness/natural justice; and equality and discrimination, including the Public Sector Equality Duty.

Cases have included **Foster v McNicol**, the most important and sensitive judgment on the governance of unincorporated associations to have been delivered by the UK's courts, in which he acted for the Labour Party as lead counsel in its successful defence of a ruling of its National Executive Committee (NEC) that an incumbent Leader of the Labour Party did not require MPs' nominations in order to be on the ballot in a leadership election triggered by a challenge to the incumbent. The Labour Party had separately instructed a QC and Mark to advise its NEC on the correct interpretation of its rules. The two barristers gave conflicting opinions but the NEC ruling followed Mark's view. A party donor, Michael Foster, mounted a silk-led High Court challenge contending that the NEC should instead have followed the QC's advice, but the High Court held that the correct interpretation was that advised by Mark.

Mark also acted as lead counsel against a silk led team for the Public Services Ombudsman for Wales in the leading authority of **Heesom** on standards regimes applying to local governance. The High Court gave extensive guidance on the rights and duties of local councillors *vis-à-vis* council officers (senior and junior); the interpretation of local government codes of conduct aimed at maintaining standards in public life which restrict freedom of speech; and the proportionality of sanctions for breach of a code of conduct. It quashed the sanction imposed on Cllr Heesom as disproportionate to his freedom of expression under Article 10, and substituted a lesser sanction. It gave guidance on the extent to which Article 10 gives special protection to criticism of officials as well as politicians. It considered the relationship between councillors and officers, including mutual trust, and the boundary between forceful criticism of officers, which was protected by Article 10, and bullying and other conduct which breached the code and merited proportionate sanction under Article 10. It established the test for a finding of bullying under the code of conduct. It considered the circumstances in which promoting a constituent's case within the local authority could amount to improper involvement in the decision-making process and be treated as an attempt to obtain political gain under the code, and what conduct would bring the office of councillor and the local authority into disrepute. The Welsh Government applied, exceptionally and successfully, to intervene in this statutory appeal to the High Court due to its assessment of the importance of the appeal to the interpretation of the local government standards regime in Wales.

Mark's public law practice often focusses on the lawfulness of major policies and nationwide practices. He is expert in the application of the Public Sector Equality Duty in different spheres, including within public authorities and in respect of contractual arrangements for outsourcing public services. He has also addressed the identification of non-delegable duties

of public authorities in the context of disparate out-sourcing arrangements. He is an expert in the interpretation of retained EU law, drawing upon his specialisation in EU law, which has included presenting cases as lead counsel/advocate to the Chamber and Grand Chamber of the Court of Justice of the European Union in Luxembourg. He has been instructed to advise at a high level on legal and policy options in respect of Brexit.

He is instructed to advise on policies and standards codes, regulatory regimes, and disciplinary processes, including as public law, privacy and data protection issues. He has advised on procedural fairness requirements in major inquiries. He is instructed to advise and act in respect of steps both to obtain/release, and to prevent the release of information and personal data.

His role as Standing Counsel to the Labour Party from 2019 involved providing general legal advice in a fast-paced and high-profile political environment on a wide range of issues (including electoral law, data protection law, equalities, discipline and the Party rulebook and procedures) to the Labour Party General Secretary and to the Party itself; advising on the Labour Party's compliance with legal and regulatory requirements; advising on problems with a pragmatic and political understanding as well as legally robust perspective; building rapport quickly and working collaboratively with stakeholders at all levels; and explaining complex legal concepts to a wide range of lay audiences.

He advises on public procurement issues and claims, particularly relating to provision of legal services. He also deals with governance and policy issues in respect of access to justice, and advises solicitors in relation to regulatory issues. He acted as an expert adviser to the Immigration Services Commissioner who distributed his Best Practice Guide to Asylum and Immigration Appeals to all regulated legal services providers as a guide to standards.

He has sat on the Bar Council Disability Panel since 2021 and on the Bar Standards Board's Disability Taskforce since 2022. He is the Chair of Doughty Street's Disability Working Group. Earlier Bar Council work includes serving on its Equality Code implementation committee which was responsible for adding sexual orientation to the protected grounds in the Equality Code.

He also draws upon extensive third sector board level experience involving a range of governance and policy work.

He is an elected Board Trustee of the Spinal Injuries Association (SIA), the leading national charity (with around 55 staff nationally) working for people who experience spinal cord injury (SCI), often causing paralysis and nearly always life changing. It is also a leading authority on SCI research and learning, supplying education, training and expertise on SCI to healthcare

and rehab professionals, campaigns and charities. As Senior Vice Chair and Chair of the Programmes Committee from 2021-2023, he oversaw essential services to SCI people and families, advocacy casework, education and training, and public affairs, influencing, and campaigning.

Before that, he was an elected member of the Board (the longest serving to that point) and convener of various committees of ILPA (the Immigration Law Practitioners Association), which is an association of lawyers, advisers, academics and NGOs which promotes effective representation and access to justice for migrants, and a just and equitable system of immigration, asylum and nationality law. As well as governance issues, he represented ILPA on various judicial and governmental stakeholder groups, and worked on briefings, evidence and advice for numerous Government, official, parliamentary and non-Governmental advisory groups, committees and inquiries.

This is an area in which he may be able to advise on a direct access basis if appropriate (as to which enquiries to his clerks are welcome).

Business and Commercial Immigration

Mark is instructed by corporate clients to advise and act on a range of immigration matters including business visits, settlement, establishment of businesses in the UK, and employee migration. He acts in appeals at all levels and in commercial judicial reviews on issues such as revocation of employers' and colleges' sponsor licenses, involving issues from common law procedural fairness to the protection of property under Article 1, Protocol 1 of the ECHR. He also acts for high net worth and prominent individuals on a range of immigration matters from important business visitor applications to options for work and settlement including as an investor, entrepreneur and, where necessary, on asylum grounds (See under Immigration – Asylum and Personal).

He is expert in retained EU law, having appeared as lead counsel in leading cases free movement cases in the Chamber and Grand Chamber of the Court of Justice of the European Union (CJEU) in Luxembourg. Legal directories refer to his involvement in landmark EU cases and describe him as *"a 'very skilled' specialist in complex EEA matters"*. He has provided high level advice on the implications of Brexit for EU citizens and UK employers and on future migration options for workers and students.

He also has a deep understanding of domestic immigration policy and practice acquired through high level casework over decades and through his long involvement in policy,

including a period of over a decade as one of the longest ever serving members of the Executive of the Immigration Law Practitioners Association (ILPA), through his representation of ILPA on court and tribunal stakeholder groups and in engagement with the Home Office and parliamentary committees, and as a past expert adviser to the Immigration Services Commissioner.

This is an area in which he may be able to advise on a direct access basis in appropriate cases (though he can only correspond directly once instructions have been discussed and accepted by his clerks).

International Law

According to Chambers and Partners, Mark *"impresses with his top-notch courtroom skills and confidence in both national and international courts"*.

He has been instructed in some of the most important and complex European court cases under the ECHR and EU law, both in the European Court of Human Rights and the Court of Justice of the European Union (CJEU) where he has presented multiple cases before both the Chamber and the Grand Chamber. He is experienced in procedures in both European courts, including obtaining urgent interim measures against the Government from the European Court of Human Rights.

He has provided high level advice on the domestic, EU, and public international law implications of various options for Brexit.

Mark acted for the claimant in both the national courts and the Court of Justice in Luxembourg in the landmark case of **NS**. He was the claimant's lead advocate in the Grand Chamber in what its secretariat said was the CJEU's most complex hearing, involving an exceptional number of interventions from Member States and national and international organisations. It established the binding effect of the EU Charter of Fundamental Rights in the UK, seen as of seminal constitutional importance. It was also of high constitutional importance across Europe as it established that Member States' duties under the Charter override general EU principles of mutual trust and recognition between Member States.

He acted as lead counsel in the leading Grand Chamber case of **McCarthy** in which a number of Member States intervened and the Attorney General, leading the UK's legal team, told the Grand Chamber that *"the issues are of exceptional importance from the perspective of the UK"*.

He was also lead counsel in **Onuekwere**, on the effect of imprisonment on the rights of EU citizens and their family members in other Member States.

Important cases in Strasbourg include **Paulet**, in which he acted as lead counsel in what was, in effect, the appeal from the Court of Appeal's judgment dismissing his challenge to his conviction. The case had been a leading English criminal authority on confiscation proceedings under the Proceeds of Crime Act 2002. It was the first ever successful challenge in Strasbourg to criminal confiscation proceedings as a violation of the right to peaceful enjoyment of property under Article 1, Protocol 1 (A1, P1). The judgment is also one of general importance to A1, P1 cases because it establishes that failure to comply with procedural guarantees inherent in A 1, P1 constitutes a violation of the substantive article.

He acted the Art 10 case of **Gaunt**, in which the Court considered the scope for interference with political speech on grounds of offence on broadcast media.

Other important cases in Strasbourg include **Bensaid**, a landmark judgment on the territorial scope of the Convention, in which the European Court of Human Rights established for the first time that Article 8 could be engaged by treatment in foreign countries that did not engage Article 3 (which led to the leading House of Lords' judgment establishing the extra territorial effect of the ECHR generally for the purposes of expulsion). His cases in English courts have also involved ground breaking issues on the extra territorial application of the ECHR to conduct outside the jurisdiction on behalf of persons outside the jurisdiction.

He has dealt with international criminal law, public international law, and private international law at the highest level of national courts, ranging from **A No 2**, the landmark House of Lords case determining the extent of the prohibition under international law on using evidence obtained by torture; to **Adan and Aitsegeur**, which established that English courts must determine the single correct meaning of the Geneva Convention under international law rather than whether a foreign court's interpretation was a legitimate one; to **AN (Afghanistan)** on international criminal responsibility for war crimes and crimes against humanity. He is also instructed in claims (in public and private law) brought from outside the jurisdiction raising issues such as extra territorial effect of the Human Rights Act and data protection legislation, conflict of laws, and the ability of a claimant outside the jurisdiction to seek judicial review of the UK Government.

Costs

Mark is instructed on inter partes costs and public funding disputes, and advises solicitors on costs, public funding and regulatory issues.

He has acted and advised extensively in relation to inter partes costs issues, from applying for costs, including indemnity costs and payments on account from the Court, to conditional fee agreements and Part 36 offers and their consequences. He is expert in the impact of Article 10 on costs issues in freedom of expression cases. He is experienced in all aspects of detailed assessment such as disputes about whether assessment should happen in the SCCO, negotiations and Part 36 offers on costs, applications for interim payment, disclosure of file records and privilege, and written and oral submissions to the Costs Judge.

He has advised solicitors on contractual issues with the Legal Aid Agency and regulatory matters, and has represented solicitors before the Legal Aid Agency's Contract Review Body.

He has also acted in major litigation about public funding, including CMX, the representative challenge to the conduct of the Legal Services Commission, Ministry of Justice, and Home Office in permitting the national legal services provider, Refugee and Migrant Justice, to go into administration leaving approximately 10,000 largely vulnerable clients without lawyers. The litigation led to a commitment to fund replacement lawyers for all clients, rather than only those facing removal, and to exceptional interim measures by the Home Office to preserve their position.

His publications include an article on procedures and tactics in obtaining inter partes costs where a judicial review settles.He was at the forefront of efforts to improve procedures for determining IP costs applications in the Administrative Court via its Users Group where he represented ILPA. He has also conducted training on dealing with inter partes costs disputes in judicial review for organisations including the Public Law Project.

Significant Cases

International courts:

- *Gaunt v UK* (2016) 63 EHRR SE15 (heightened protection of political speech and narrow scope of the concept of 'gratuitous personal attack' in such speech; interference by regulators/courts with broadcast speech on the basis of offence to the broadcast audience, and the margin of appreciation of national authorities and courts in such cases)

- *McCarthy CJEU* [2015] QB 651 [2015] 2 CMLR 13; QBD: [2012] EWHC 3368 (Admin) (Grand Chamber held that Member States were not entitled to rely on claims of systemic risks to their borders from abuse of rights to suspend free movement rights and rejected UK's claim that UK's Frontier Protocol to Lisbon Treaty gives UK an opt out) Member States powers to suspend free movement rights based on abuse of rights and interpretation of Frontier Protocol to the Lisbon Treaty and whether it gave UK an opt out.
- *Paulet ECtHR* [2014] Lloyd's Rep FC 484; [2014] Crim LR 750; Times, May 19, 2014 (first Strasbourg judgment to hold that confiscation proceedings under the Proceeds of Crime Act 2002 violated the right to peaceful enjoyment of property under A1, P1. Court held that review of Mr Paulet's case by the Court of Appeal (Criminal Division) in Nelson and Paulet [2010] QB 678 was incompatible with the procedural requirements of A1, P1, and amounted to a breach of substantive article).
- *Onuekwere* [2014] 1 WLR 2420; [2014] 2 CMLR 46; [2014] Imm AR 551 (leading case in the CJEU on the effect of imprisonment on permanent residence rights of EU citizens and their family members, and the rationale for permanent residence).
- *NS/ Saeedi CJEU*; [2012] QB 102 [2012] 2 CMLR 9; CA: [2010] Eq LR 183 [2010] EWCA Civ 990; QBD: [2010] EWHC 705 (Admin) (whether the EU Charter of Fundamental Rights has direct effect in the UK; its application to the transfer of asylum seekers between EU Member States and relationship with EU principle of mutual trust and presumption of compliance).
- *Bensaid v UK* (2001) 33 EHRR 10 [2001] INLR 325 (leading Strasbourg authority on 'extra-territorial' application of article 8 and challenges to expulsion on mental health grounds)

National courts:

- *Millett v Corbyn* [2021] EWCA Civ 567 [2021] 4 WLUK 143 (Court of Appeal interpreting Honest Opinion defence in s.3 of the Defamation Act 2013; the role of the common law concept of bare comment; use of a test of whether interference with free speech was serious enough to fall *"below the standards expected of citizens in modern British society"*, held to be a matter of fact and degree; disapproving leading practitioner text, Gatley, by holding that it misled the QBD Judge into treating the common law threshold of seriousness for whether a statement is defamatory as multi-factorial; supplied the first Court of Appeal consideration and approval of the modern preliminary trial procedure in defamation claims)
- *Millett v Corbyn* [2020] EWHC 1848 (QB) [2020] 7 WLUK 151 (preliminary trial of defamation claim in reference innuendo case, approach to application to amend

outside the limitation period to plead further extrinsic facts, being five articles said to lead to the identification of the claimant by additional viewers watching the statement complained of by the defendant on the Andrew Marr Show; Court accepted that each fresh extrinsic fact (article) was seeking to introduce a fresh cause of action; consideration of the approach to limitation in defamation claims; permission to amend refused with respect to each new article relied upon because each proposed cause of action failed by reference to the test for exercising discretion to disapply the limitation period in a defamation claim; approach to determining meaning in a reference innuendo case did not depend on proving that any readers actually viewed the Programme with knowledge of the extrinsic facts, this becoming relevant only when serious harm is addressed under s.1, Defamation Act 2013)

- *Riley v Murray* [2020] EWHC 977 (QB) [2020] EMLR 20 (approach to defining the scope of the relevant publication/context for the purpose of determining meaning in social media cases, with particular consideration of Twitter; disapproving perceived trend to a wider approach)
- *Turley v Unite the Union and Walke*r [2019] EWHC 3547 (QB) [2019] 12 WLUK 379 (the approach to a Chase level 2 reasonable grounds to suspect Truth defence; the approach to a public interest defence by a trade union and blogger; the approach to meaning of a statement supplied by a contributor to an article; disapproval of disclosure and candour failings in withholding politically embarrassing messages, which brought suspicion on the claimant, who was fortunate that Judge satisfied that the evidence refuted her dishonesty)
- *Grenfell Tower Inquiry Phase 1 Report* (October 2019, **www.grenfelltowerinquiry.org.uk/phase-1-report**) (acting for 66 bereaved and survivors in Phase 1 of the Grenfell Tower Inquiry; report made detailed findings on the events on the night of the fire, and found that the Tower did not comply with building regulations designed to prevent the spread of fire and that inadequacies in the emergency services' planning and response on the night contributed to the loss of life; multiple recommendations made to improve planning for high rise fires and emergency response to them, and on warning and evacuation measures)
- *Turley v Unite the Union and Walker* [2019] EWHC 2997 (QB) [2019] 9 WLUK 404 (test on application to amend, particulars judged to satisfy the adequacy standard required of particulars of dishonesty in light of consideration of the authorities, and to form a sufficient pleaded basis for reducing or extinguishing damages, though not at that stage for strike out)
- *UB (Sri Lanka)* [2017] EWCA Civ 85 [2017] Imm AR 1182 (leading case on the Home Secretary's duty of candour when opposing asylum appeals in the First-tier Tribunal

and Upper Tribunal; Court of Appeal ruled that Home Secretary is required to produce to judges relevant country information guidance and policy which could assist the asylum seeker and *"delineate[d]… the clearest obligation on the Secretary of State to serve relevant material and ensure it was before the Tribunals at both levels"* and *"deprecate[d] any suggestion that this obligation of service is displaced or diminished by the availability of the material online"*, emphasising the number of asylum seekers unrepresented or whose lawyers are *"less than optimal"*; indicated that common practice of the Home Secretary in failing to refer to relevant guidance that assisted an appellant was unlawful and that she must ensure that her country guidance information/policy is assessed for relevance when opposing an appeal)

- *Foster v McNicol and Corbyn* [2016] EWHC 1966 (QB) (High Court upheld Labour Party NEC ruling that in a leadership election to determine a challenge triggered by MPs, the incumbent leader could not be excluded from the ballot of members).
- *Babbage* [2016] EWHC 148 (Admin) (leading authority on unlawful justification of executive detention by reference to steps to initiate criminal prosecution, the scope to prosecute for refusing voluntary return, and the requirement to establish a realistic prospect of removal before risk of absconding and offending may be relied upon to support detention).
- *Tarakhil* [2015] EWHC 2845 (QB) (QBD judgment holding detention unlawful by reason of materially flawed reliance upon irrelevant factors and insufficient enquiry, and award of aggravated damages due to defendant's inadequate steps to justify detention and failure to lead adequate evidence at trial).
- *AN (Afghanistan)* [2015] EWCA Civ 684 (test for exclusion from the Refugee Convention for war crimes and crimes against humanity and the Upper Tribunal's jurisdiction to enlarge the scope of the matters remitted to it by the Court of Appeal in the absence of an order prohibiting this or an abuse of process).
- *Heesom* [2015] PTSR 222; [2014] 4 All ER 269; [2014] BLGR 509; [2014] EWHC 1504 (Admin)(sanction against local councillor for breach of local government standards quashed as a disproportionate interference with freedom of expression under Article 10. The Court gave guidance on the extent of the enhanced protection afforded to political expression, the correct approach to the interpretation of local government codes of conduct, and dividing lines between criticism of officers which is protected by Article 10 and unprotected conduct which breached the Code, including the prohibition on bullying, and the circumstances in which advocating constituents' cases could amount to an improper attempt to obtain political gain).
- *Fakih* [2014] UKUT 513 (IAC) (Home Secretary's No Recourse to Public Funds (NRPF) policy unlawful, firstly because the Home Secretary had introduced it without

the necessary Parliamentary approval and secondly, because it breached her Public Sector Equality Duties (PSED) in respect of disabled claimants under the Equality Act; further breach of PSED in relation to individual decision making).

- *CM (Zimbabwe)* [2014] Imm AR 326; [2013] EWCA Civ 1303 (leading authority on obligations of disclosure and candour which apply to the Home Secretary and Foreign Office in asylum appeals, including country guidance cases; approved unprecedented new procedure for dealing with PII via the appointment of a PII advocate by the Attorney General; gave guidance on reliance on anonymous evidence).
- *CM* (EM Country Guidance: Disclosure: Zimbabwe) [2013] UKUT 59 (IAC) (Tribunal gave general guidance as to the correct approach to disclosure in the Upper and First-tier Tribunals in asylum appeals and how to address disputes concerning anonymous evidence; and whether a Special Adjudicator or PII Advocate should be appointed to deal with PII).
- *S* [2012] EWHC 2638 (Admin); [2012] EWHC 955 (Admin) (unlawful conduct of Home Office/ Treasury Solicitor in an unrelated test case by disclosing confidential information about a claimant who had been removed to Sri Lanka; whether Court can consider breach of confidence in judicial review proceedings brought by claimant outside the UK and grant relief requiring the defendant to return the claimant to the jurisdiction from Sri Lanka).
- *R (MK) v SSHD* [2012] EWHC 1896 (Admin); (acted for Refugee Action, contending that Home Office policy on provision of asylum support risked breaching Article 3 ill-treatment and was unlawful; circumstances in which a policy rather than individual cases could be declared unlawful The case raised important issues about the obligation of the Government to avoid breaches of Article 3 by providing support to prevent destitution, and EU law rights aimed at protected human dignity).
- *JG and CM* (Zimbabwe) [2012] EWCA Civ 1060 (appeal from major Zimbabwean Country Guidance case which had narrowed the RN risk category; Court of Appeal made unprecedented extensive disclosure orders against Home Office and Foreign Office following which the Home Office consented to the Court of Appeal quashing the Tribunal's determination on the basis that Home Secretary's failure to comply with disclosure order in Tribunal had rendered the Tribunal's determination wrong in law).
- *EM (Returnees) Zimbabwe CG* [2011] UKUT 98 (IAC); (major Zimbabwean Country Guidance case heard over several months which was the first Country Guidance case in which extensive disclosure was ordered against the Foreign Office. It narrowed the RN risk categories but gave important guidance on Article 8 for families with children, generally and in the Zimbabwean context. It was the first CG to grapple with risk based on future events, in this case the Zimbabwean elections).

- *Gaunt CA*: [2011] 1 WLR 2355 [2011] EWCA Civ 692; DC: [2011] 1 WLR 663 [2010] EWHC 1756 (Admin) (right of presenters and journalists to challenge Ofcom rulings on Art 10 grounds; test applied by the Court when considering Ofcom rulings in Art 10 cases; extent of protection of political speech in broadcasting, European Court of Human Rights decided to communicate the case to the UK in March 2014).
- *Nasseri QBD, CA & HL* [2010] 1 AC 1; HL: [2009] UKHL 23, CA: [2008] EWCA Civ 464, QBD: (2008) 1 All ER 411 [2007] EWHC 1548 (Admin); (declaration of incompatibility by High Court to effect that provision deeming EU states to be safe for third country asylum transfers violated the UK's Article 3 obligations, Home Secretary's appeal upheld by the Court of Appeal and by the House of Lords on different grounds).
- *RB, U, and Othman*: [2010] 2 AC 110 [2009] UKHL 10 (acted for Liberty in their intervention in the House of Lords arguing that the Special Advocate regime in terrorism cases was incompatible with the common law, Article 3 and Article 6).
- *Ahmed* [2010] EWHC 625 (Admin) (prospects of conducting further expulsions to central government controlled Iraq within a reasonable period and consequences for lawfulness of detention of Iraqi nationals in the UK, plus disclosure and oral evidence in judicial review proceedings).
- *Limbu* [2008] HRLR 48; Times, 7th October 2008 [2009] A.C.D. 9 [2008] EWHC 2261 (Admin)(challenge to the Government's refusal to allow thousands of Gurkha veterans to settle in the UK, raising discrimination issues under Article 14 and the common law, as well as issues about the right to disclosure in public law proceedings which led to extensive disclosure of internal disagreements between the Home Office and MOD).
- *Rudi HL*: [2008] 4 All ER 1127 [2008] 1 WLR 1434 [2008] UKHL 42; CA [2007] EWCA Civ 1326; QBD: [2007] ACD 57 [2007] EWHC 60 (Admin) (relationship between Article 14 and the common law principle of equality - challenge to the exclusion of former unaccompanied minors from the Home Office's family amnesty).
- *RN (Returnees) CG* [2008] UKAIT 83 (landmark Country Guidance case in which it as held that any returnee was at risk unless they could demonstrate allegiance to Mugabe's Zanu-PF).
- *AA and LK* [2007] 1 WLR 3134 [2007] 2 All ER 160 [2006] EWCA Civ 401(the interpretation of the non-refoulement provision in the Refugee Convention and removal to Zimbabwe).
- *AA (No. 2)* [2007] EWCA Civ 149 (whether removals could begin to Zimbabwe and the threshold for Article 3 ill-treatment in detention abroad).
- *Al-Skeini* [2007] 1 QB 140 [2004] EWHC 2911 (Admin) (acted for Redress in their intervention in the Divisional Court on the extent to which articles 2 and 3 govern the conduct of British armed forces in Iraq).

- *A (No.2)* [2006] 2 AC 221 [2005] UKHL 71 (acted for a coalition of NGOs including Amnesty International in the leading case on the admissibility of evidence obtained by torture in legal proceedings heard by seven judges).
- *Khadir HL*: [2006] 1 AC 207 [2005] UKHL 39, CA: [2003] INLR 426 [2003] EWCA Civ 475, QBD: [2002] EWHC 1597 (Admin); (the limits on the Home Secretary's powers of detention and whether asylum seekers who cannot be removed must be granted leave to remain, and Parliament's power to interfere with judgments of the Court through retrospective legislation).
- *Kurtolli* [2004] INLR 198 (circumstances in which risk of suicide will render expulsion inconsistent with article 3).
- *CA* [2004] INLR 453 (limits of jurisdiction on an appeal on a point of law and the limits of N in a HIV case involving pregnancy).
- *Madadi* [2004] Imm AR 530 (whether article 6 applies to asylum upgrade appeals).
- *Szoma* [2003] All ER (D) 230 (Feb) (challenge to local authority's policy of making payments to asylum seekers in arrears).
- *Husain* [2002] ACD 10 (whether withdrawal of asylum support violates article 3, and applicability of article 6 to asylum support appeals).
- *Dhima* [2002] INLR 243 (test for sufficiency of protection for article 3 cases).
- *Kinuthia* [2002] INLR 133 (recourse to remedies following ill-treatment does not constitute adequate protection).
- *Adan and Aitsegeur* [2001] 2 AC 477 (the only occasion upon which the House of Lords held that European third countries were unsafe).
- *Turgut* [2001] 1 All ER 719 [2000] HRLR 337 [2000] Imm. A.R. 306 [2001] A.C.D. 12Times, February 15, 2000 (standard of review in article 3 cases and treatment of fresh evidence on judicial review - settled after the House of Lords granted permission to appeal).
- *Revenko* [2001] QB 601 (in what circumstances statelessness gives rise to refugee status).
- *Senkoy* [2001] Imm AR 399 [2001] INLR 555 (definition of fresh claim for asylum).
- *Demirkaya* [1999] Imm AR 498 [1999] INLR 441 (meaning of persecution and correct approach to past persecution when assessing future risk).
- *Cakabay* [1999] Imm AR 176 [1998] INLR 623 (whether the High Court should quash a refusal to recognize a fresh claim for asylum if it were wrong rather than only if it were irrational and whether immigration adjudicators could determine whether the fresh claim test was satisfied on the basis that they were determining their jurisdiction to hear an appeal).
- *M* [1999] Imm AR 548 (expulsion of person with AIDS).

- *Bostanci* [1999] Imm AR 411 (challenging exclusion of legal interpreter from asylum interview).
- *Sarbjit Singh* [1999] Imm AR 445 (definition of torture).
- *B* [1998] INLR 315 (entitlement to damages for false imprisonment where decision to detain asylum seeker flawed on public law grounds).
- *Uzun* [1998] Imm AR 314 (expulsion of dependants of asylum seeker compatibility with articles 6 and 8 of ECHR) - Area of Practice: Administrative/Public Law; Human Rights; Immigration Orman [1998] INLR 431 (treatment of asylum claims from children) - Area of Practice: Immigration.
- *B* (1997) CA (normal bail criteria apply to Immigration Act detention and requirement of reasons for refusing bail).
- *Brzezinski* (1996) (criteria for the detention and bail of asylum seekers and persons subject to immigration control).