

Stephen Cragg KC



Call: 1996

Silk: 2013

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Profile

Chambers and Partners directory described him as “steeped in years and years of public law” and “formidable when handling judicial reviews”. He has appeared in over 100 full judicial review hearings and appeals.

In the 2023 Chambers and Partners directory he is listed as a leader in his field as a Silk in five areas: Administrative and Public Law, Civil Liberties and Human Rights, Police Law (mainly claimants), Data Protection and Community Care.

He is team leader for Doughty Street’s **Data Protection and Information Rights Team**, and also sits as a judge in the Information Rights Tribunal, ruling on FOIA and DPA appeals.

Stephen’s public law practice includes human rights areas, data protection, regulatory, commercial and social welfare law. He has a special interest in public law cases involving the criminal justice system, information rights, community care and health law, and coroners’ inquests. His other area of expertise is in civil actions involving public authorities, and he is as at home cross-examining witnesses as making detailed submissions in public law cases.

He has been lead counsel in a number of landmark Supreme Court and Court of Appeal cases involving retention/disclosure of information by the police, following his success in the European Court of Human Rights DNA retention case of **S and Marper v UK** [2009] 48 EHRR 50.

Stephen has been a Special Advocate since 2008, appearing for appellants in many national security appeals before SIAC, as well as acting in control order and TPIM cases, judicial review applications, and cases before the Security Vetting Appeal Panel.

As well as acting for individual and commercial claimants in a series of important cases often testing the frontiers of public law and human rights, Stephen also provides advice and representation for a number of local authorities and NHS bodies in public law cases. He has acted for and advised a range of NGOs and other organisations over the last few years, including the Law Society, the Equality and Human Rights Commission, Liberty, Amnesty International, and Big Brother Watch.

He is general editor of Police Misconduct: Legal Remedies, the fifth edition of which will be published in 2022, with contributions from a number of members of chambers.

Stephen is also the general editor of the Community Care Law Reports, and a regular contributor of articles to Legal Action and other journals.

Stephen is the incoming chair for 2022 for Bar Human Rights Committee and he has an ongoing involvement in international human rights law: carrying out training and trial observations in Albania, Palestine, Turkey, the Maldives and Nigeria.

He was the co-author of a July 2016 BHRC report into conditions at the Calais refugee camps. He was a member of the Independent Advisory Panel on Deaths in Custody (2014-2018), and in this role he was part of the Harris Review into the deaths of young people in prison, which reported in 2016.

Stephen was Chair of the Public Law Project between 2008-2015 during which time the charity won a number of prestigious awards, and he remained a trustee until 2018.

Stephen sits as a Recorder in the Crown Court on the South-Eastern Circuit.

Related practice areas

Actions Against the Police and Public Authorities

International Law

Court of Protection & Mental Health

Data Protection and Information Law

Administrative & Public Law

Education

Administrative & Public Law

Stephen is primarily a public lawyer, acting in scores of judicial review cases every year, often in regulatory, health and social services, and criminal justice cases, and often involving the Human Rights Act. He acts for individuals, businesses, public authorities, NGOs and professional bodies. He is a Special Advocate.

A selection of his present and recent cases include:

- Leading counsel in the Supreme Court in November 2016 for appellants from Northern Ireland challenging the lack of access to NHS abortion services in the rest of the UK: *R (A & B) v Secretary of State for Health* [2016] 1 W.L.R. 331
- Leading counsel for B in the Supreme Court case of *R (T and B) v Secretary of State for Justice* [2015] A.C. 49, which successfully challenged the automatic disclosure of cautions in criminal record checks and the regulation of the rehabilitation of offenders scheme.
- Leading counsel for an agency challenging HMRC powers to seize and use documentation: *R (PML) v HMRC* (ongoing).
- Leading counsel for challengers to Labour Party eligibility rules in leadership contest: *Evangelou v McNicol* [2016] EWHC 2058 (QB)
- Leading counsel in Court of Appeal case due to be heard 2017 about coroners' powers in still- birth cases, and publicity in coroners' courts: *R (T) v HM Coroner for West Yorkshire*.
- Leading Special Advocate in a series of public law cases involving refusal of naturalisation and exercise of the Royal Prerogative in removing passports from British citizens.
- Leading counsel acting alleged hacker Lauri Love, challenging National Crime Agency applications for disclosure of passwords outside the RIPA regime.
- Leading counsel in *R. (GC) v Commissioner of Police of the Metropolis* [2011] 1 WLR 1230, in the Supreme Court: the police retention policy in relation to DNA samples of unconvicted persons was a breach Article 8 ECHR.
- Leading counsel in the Supreme Court in the case of *McDonald v RB Kensington and Chelsea* [2011] P.T.S.R. 1266 where the court dismissed challenges to decisions not to provide the appellant with night-time care. Subsequently, the European Court of Human

Rights found that the process by which the appellant had been re-assessed was a breach of Article 8 and awarded damages: McDonald v UK (2015) 60 E.H.R.R. 1

Out of court, Stephen continues to act as a trustee (having been chair of the trustees from 2008- 2015) for the influential charity, the Public Law Project.

Actions Against the Police and Public Authorities

Stephen is frequently instructed in cases of assault, false imprisonment, malicious prosecution and other causes of action against the police. He has a nationwide practice in this area, including instructions in high profile cases from Northern Ireland.

He also has a particular expertise in judicial review and human rights cases concerning police powers. He acted for two claimants in the “Royal wedding” policing JR: R (Hicks) v Metropolitan

Police Commissioner. He is co-author of “Police Misconduct: Legal Remedies (5th edition, 2015).

Stephen has been deeply involved in a series of reported cases concerning the retention and disclosure of information by the police, following his success in the DNA retention case S and Marper v UK [2009] 48 EHRR 50. In R. (GC) v Commissioner of Police of the Metropolis [2011] 1

W.L.R. 1320 he was lead counsel in the Supreme Court in the case which finally decided that the current police retention policy in relation to DNA samples of unconvicted persons was a breach Article 8 ECHR.

Stephen was lead counsel for B in the Supreme Court case of R (T and B) v Secretary of State for Justice, which successfully challenged the automatic disclosure of cautions in criminal record checks. This followed on from his Supreme Court case of R (L) v Metropolitan Police Commissioner, which set out the Article 8 compliant test for the disclosure of non-conviction information by the police.

He was also lead counsel in R (C) v Metropolitan Police where the Divisional Court decided that the Metropolitan police policy for retaining custody photographs breached Article 8. Stephen was counsel for R in R (T and R) v Metropolitan Police Commissioner which considered whether police retention of harassment warnings complied with Article 8 ECHR. In 2013 Stephen acted for the claimant in R (TD) v Metropolitan Police Commissioner in a case

about the retention of arrest records. He was counsel in *R (R) v Chief Constable of West Midlands* which examined the lawfulness of taking DNA samples from those with historic convictions.

Stephen also acts in inquests where police powers are in issue. Most recently he acted for the family of Lloyd Butler who died having been detained in police custody in Birmingham.

Community Care and Health

Stephen is an experienced community care and health care law practitioner, having worked in the area for over 20 years. He is the legal update editor for the Community Care Law Reports and has run many training courses for both lawyers and social services/health care staff. He has been instructed in many seminal community care and health cases such as:

- *R v Gloucestershire County Council ex p Barry* (taking resources into account when assessing need for services for disabled people);
- *R(G) v Barnet LBC* (nature of duty under s17 Children Act 1989);
- *R (Grogan) v Bexley NHS Care Trust* (leading case on health/social services divide);
- *D v Southwark LBC* (s20 Children Act 1989 and duty to maintain looked after children); and *R (Chavda) v London Borough of Harrow* (Restriction on community care services, human rights and the disability equality duty).

He has also been involved in some of the leading recent community care cases. He was lead counsel in the Supreme Court in the case of *McDonald v RB Kensington and Chelsea* where the court dismissed challenges to decisions not to provide the appellant with night-time care.

Subsequently, the European Court of Human Rights found that the process by which the appellant had been re-assessed was a breach of Article 8 and awarded damages: *McDonald v UK*.

Stephen acted for the claimants from Northern Ireland challenging the lack of access to abortion services in the rest of the UK: *R (A & B) v Secretary of State for Health*. The case is currently before the Court of Appeal. He was on the winning side in *R (C) v North Tyneside Council* where the High Court held that aspects of the defendant's charging policy was unlawful. And in *R (East Midlands Care Ltd) v Leicestershire CC* he acted for the local authority in a challenge to its payment rates for residential care. In *H and L v A City Council*, Stephen was counsel in the successful Court of Appeal case involving Article 8, challenging

the decision of a local authority to disclose information previous convictions to potential employers, and purporting to place restrictions on direct payments.

Stephen has a special interest in mental health law, acting for individuals and health care bodies in numerous cases. He sits as a part-time judge in the mental health tribunal.

Data Protection and Information Rights

Stephen is the leader of Chambers' Data Protection and Information Law Team, and has been involved in some of the leading cases of the last decade especially in relation to retention and use of data by the police. Some of the highlights are as follows:-

- Lead counsel in seminal data retention/use cases *S and Marper v UK* (retention of DNA samples and fingerprints); and *R (L) v Metropolitan Police Commissioner* (Supreme Court, disclosure of information for enhanced criminal record certificates).
- Lead counsel in seminal case re: disclosure of cautions and convictions (*R(T) v GMP* – Supreme Court).
- Lead counsel in leading case on retention of custody images (*R (C) v Metropolitan Police Commissioner* (Divisional Court)

He is a Special Advocate involved in National Security cases with closed material procedures, and sits as a judge in the **Information Rights Tribunal**. Current and recent cases include the following:-

- Lead counsel in case on lawfulness of Facial Recognition Technology: 2019-20

R (Big Brother Watch and Baroness Jones) v Metropolitan Police Commissioner

- **Acting for a number of applicants in ECHR re disclosure of information under Rehabilitation of Offenders Act**

CC v United Kingdom (Appn 51220/13); *AW v United Kingdom* (Appn 51861/13)

- **Fee-paid judge of the Information Rights Tribunal, including cases involving DPA and penalties, and Freedom of Information.**

- **Acting for claimants in data protection cases against police and local authority for unlawful disclosure of Gang Matrix information under the DPA.**
- **Acting for claimant in case of registration and disclosure of Potentially Dangerous Person status by police.**
- **Special Advocate appointed by A-G in national security sensitive data cases.**
Recent appeal on Terrorism Prevention implementation Measures (TPIM) case: *QT v Secretary of State for Home Department [2019] EWHC 2583 (Admin)*