Mark Henderson

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Profile

According to the legal directories, he is “one of the finest legal minds at the Bar”; “he has an awesome intellect and really gets into the detail of a case” (Legal 500 2016); "impresses with his top-notch courtroom skills and confidence in both national and international courts" (Chamber and Partners 2015); "his mind is as sharp as a razor blade, and he is a masterful legal tactician" (Legal 500 2015); "held in high esteem ... extremely thorough and never compromises on standards” and “has usually already thought of every point he is confronted with in court and has a better answer” (Chambers and Partners 2016). He was awarded Legal Aid Barrister of the Year in 2010, the citation identifying “his agility of intellect and encyclopaedic legal knowledge combined with his forensic attention to detail".

His work includes judicial review; asylum, immigration and free movement; freedom of expression, media, defamation; privacy, data protection and information law; public and private law detention claims; community care; equality/ discrimination; public standards and regulatory issues; and the governance of unincorporated associations, especially political parties, including disciplinary/standards codes.

Over the last two decades, he has acted in numerous leading cases. He is experienced in running strategic litigation, including test cases affecting many thousands of claimants in the

UK and the EU. He has acted for national and international NGOs in public interest interventions at the highest level, as well as dealing with such interventions in his own cases.

His work encompasses all levels of domestic courts together with the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). He has appeared as lead advocate before both the Chamber and the Grand Chamber of the CJEU. He was advocate in the Grand Chamber in the landmark case of NS which held that the UK had no opt out from the EU Charter of Fundamental Rights, and in McCarthy, the case in which the Grand Chamber held that the UK was not entitled to suspend free movement rights based on claimed systemic threats to UK borders, and that the UK's Frontier Protocol to the Lisbon Treaty gave the UK no opt out from free movement rights. Recent cases in the ECtHR include Paulet, in which he acted as lead counsel in the first ever successful Strasbourg challenge to confiscation under the Proceeds of Crime Act 2002, with the ECtHR accepting that confiscation violated the right to peaceful enjoyment of property under A1, P1.

His domestic cases have involved cutting edge issues such as the limits of freedom of expression, the right to disclosure and cross-examination in judicial review, and the standard of review in Human Rights Act cases. Recent authorities have included Foster v McNicol and Corbyn, one of the most politically significant and sensitive cases to have come before the High Court in recent years, in which he acted for the Labour Party as lead counsel in its successful defence of the NEC's ruling that the Leader of the Labour Party could not be excluded from the ballot to determine a leadership challenge. Other recent cases include Babbage, which held that the Home Secretary's practice of using administrative detention powers to detain Foreign National Offenders while she pursued criminal prosecution was unlawful.

Previous authorities include Gaunt v Ofcom which established the right of journalists to bring free speech challenges to Ofcom rulings against broadcast companies, and Limbu, the British Army Gurkha judicial review which led to the Government's defeat in the House of Commons over its refusal to permit Gurkha settlement. He is accustomed to conducting cases in the context of wider public campaigning, and he was a member of the delegation that collected the Human Rights Award from Justice and Liberty on behalf of the Gurkha Justice Campaign following their successive victories in the High Court and in Parliament.

Public interest interventions have included acting for Liberty in their intervention in the House of Lords in RB, U and Othman, arguing that the Special Advocate regime in terrorism cases was incompatible with common law constitutional rights and the ECHR, and for 14 organisations, including Amnesty International, Human Rights Watch, and the Law Society, in their intervention in A No. 2, the internationally acclaimed case which ruled that no circumstances could permit the admission of evidence obtained through torture.

He has addressed conferences and seminars on judicial review, EU law, asylum, immigration, and community care for organisations such as Justice, Legal Action Group, the Public Law Project, the Immigration Law Practitioners Association (ILPA), the Centre for European Legal Studies at Cambridge, and the British Institute of International and Comparative Law. He is author of the **Best Practice Guide to Asylum and Human Rights Appeals**, the latest electronic edition published by EIN in 2015. He was one of the longest ever elected members of the Executive of ILPA from 2000 until he stood down in 2012 and currently represents ILPA on the user group of the Administrative Court. He has sat on Bar Council working parties and advised the Bar Council on public funding issues.

He is regularly briefed as a leading junior, and appears against silks in domestic and international courts, including recently as lead counsel against the Attorney General, who led the UK's legal team in the CJEU's Grand Chamber in McCarthy. He is accustomed to dealing with urgent court applications in cases ranging from expulsion to media. He will act on conditional fee agreements where appropriate.

Although he usually works with a solicitor, he is public access accredited and will accept instructions via his clerks on this basis in an appropriate case. He cannot correspond about direct access instructions until they have been accepted by his clerks, to whom all enquiries should be directed.

Education

MA (Hertford College, Oxford)

Related practice areas

Actions Against the Police and Public Authorities
Immigration
International Law & Arbitration
Media, Defamation and Freedom of Expression
Data Protection and Information Law

What the Directories say

The Legal 500 2016: “One of the finest legal minds at the Bar.”; “He has an awesome intellect and really gets into the detail of a case”; “successfully represented a man who had been detained for over two years, despite it being impossible to deport him to Zimbabwe, in High Court case R (Babbage) v SSHD”.

Previous editions: "His mind is as sharp as a razor blade, and he is a masterful legal tactician" (2015); "An absolute perfectionist" (2014); “a great tactician" (2013); “very skilled in

complex [European Economic Area] cases” (2012).

Chambers and Partners 2016: "Held in high esteem for a practice that sees him acting in leading cases in the fields of asylum, human rights and EU free movement law. Peers are quick to point out his public law expertise... Strengths: Mark is extremely thorough and never compromises on standards. He has usually already thought of every point he is confronted with in court and has a better answer."

Previous editions: "impresses with his top-notch courtroom skills and confidence in both national and international courts.... really pushes cases as far as he can... lots of experience and gets good results... Very skilled on complex EEA appeal matters." (2015) "Has a complex caseload in the UK and Europe. Praised by his peers... not afraid to tackle the most complex issues." (2014) "Solicitors instruct Henderson on complicated EEA cases as he is "absolutely excellent on really difficult, technical cases" (2013); “true expert... extraordinarily tenacious character and a creative thinker who expects the best of himself” (2012); "commended for his expertise on immigration, asylum, EU law and human rights and has recently been involved in cutting-edge judicial review cases relating to disclosure. Sources admire his "phenomenal preparation" as well as his passion and enthusiasm for his subject" (2011) "outstanding with encyclopaedic knowledge" (2010) "hugely passionate public lawyer" (2010), "a master of tactics and strategy" (2007) "incredibly bright" (2004).

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 Duties, community care, commercial judicial reviews, and EU law including the EU Charter of Fundamental Rights. 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 determines issues of fact. He is experienced in litigating private law causes of action in judicial review proceedings and in 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. He has recently been involved in achieving changes to crucial Administrative Court guidance for determining inter partes costs issues, and sits on the Administrative Court’s Working Group on Anonymity and Reporting Restrictions.

Recent 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 all political expression was entitled to the same enhanced protection, and that it 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 not limited to points of 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 recent leading cases include Babbage, the latest in 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 giving 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).

His recent 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 the Attorney General's personal explanation of that conduct.

Limbu, brought on behalf of thousands of Gurkha veterans, was one of the highest profile judicial reviews of recent years. 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 Gurkha policy 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 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 as to those facts.

Other leading judicial reviews include Khadir, the 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 is expert in procedure for obtaining and formulating references to the CJEU in judicial reviews, and in dealing with disputes following the return of the case to the Administrative Court to ensure that the CJEU's judgment is given effect. 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.

Media Law and Defamation

Media law is a major part of Mark's practice, including defamation, freedom of expression, breach of confidence, privacy and misuse of private information, election law, and media regulation.

The nature of his work in this field means that his instructions are often confidential. He has advised prominent political, trade union, media, and sports figures on defamation, privacy and data protection matters, often on an urgent basis and against a backdrop of high controversy in national media. He is accustomed to working with solicitors in seeking to pre-empt, mitigate, and correct adverse coverage, pre and post publication, without resort to litigation. In addition to claims about publication in the media, online and in print, he has dealt with defamatory publication on social media and in an employment context, as well as defamation complaints on behalf of profit-making corporate bodies.

He is also experienced in advising on complaints and proceedings under regulatory codes, including Ofcom, the BBC/ BBC Trust, and Ipso. His case of Gaunt v Ofcom is the leading case on the application of Article 10 to Ofcom's duties as a broadcasting regulator, and it established the right of journalists and presenters to challenge Ofcom rulings under Article 10 even where the broadcasting company has accepted Ofcom's ruling. He currently acts in the Strasbourg proceedings which challenge Ofcom's scope to rely on offensiveness to the broadcast audience as a basis for adverse rulings that interfere with political speech.

He acts for both claimants and defendants in defamation cases. Recent instructions, other than confidential matters, include acting for Tony Blackburn in the Dame Janet Smith Enquiry and subsequently in dealing with defamation and contractual issues with the BBC flowing from its response to Dame Janet's report, and with potentially defamatory reporting of these matters. Other recent instructions include acting for a leading figure in the gypsy and traveller community in a successful libel claim against the Daily Mail (for a story suggesting that he made false allegations of racial abuse to support a racially aggravated prosecution).

Defendant defamation work has included acting for the Morning Star in resisting a claim by a former senior police officer in connection with trade union blacklisting issues.

He acted for the Police Commissioner for Kent, Ann Barnes in respect of a defamatory tweet by an opposition candidate during her election campaign, the case being conceded in the face of an imminent emergency injunction application relying on breach of election law.

He has acted, confidentially, in respect of privacy and data protection matters in the course of major media investigations, and his non-confidential privacy matters have included a school teacher's privacy and breach of confidence claim against the Daily Mail for publication of stolen topless photographs.

He also identifies and litigates free speech and privacy/breach of confidence claims in his wider public law practice. His case of Heesom led to a major Article 10 judgment in which the High Court ruled that the penalty imposed on a local councillor for vociferous and allegedly offensive public and private criticism of council officers was a disproportionate interference with free speech. The judgment emphasised the very wide scope of speech falling within political expression and that all political expression was entitled to the same enhanced protection under Article 10. He also acted in the ground-breaking breach of confidence judicial review of S which established the right to rely on breach of confidence in public law proceedings, developed the public law obligation to respect confidential information, and achieved an unprecedented remedy for breach of confidence.

He sits on the Administrative Court's Working Group on Anonymity and Reporting

Restrictions which is responsible for developing procedures for applications for anonymity/ reporting restrictions which balance the rights of claimants and the media. He has also advised and acted in a number of cases dealing with restrictions on publication by the media of the identity and other sensitive information about parties and witnesses.

This is an area in which he may be able to advise on a direct access basis, at least in the first instance, and his clerks will happily discuss possible instructions on this basis.

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 EU law and the Human Rights Act (for breach of various Convention rights). 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 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).

Recent 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 recent 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.

In 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 recent 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.

Immigration Asylum and Personal

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 Immigration and Asylum Chamber of 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 current electronic edition, co-authored with Alison Pickup, is published and publicly accessible on the **EIN**.

He is expert in EU free movement and asylum law and litigation. He has provided high level advice on the implications of Brexit for future migration policy. He is experienced in procedures for obtaining references from the Upper Tribunal, Administrative Court, and Court of Appeal, and in drafting and resolving disputes over the texts of the reference to the CJEU. 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 recent 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 into the UK visa-free. In another free movement case, 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 presented 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 determining asylum applications. 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. 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 in 1997 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.

Recent 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 expressly reserved the correctness of the interpretation of substantive international criminal law 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.

He 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 now the 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 non-disclosure established by unprecedented disclosure orders from the Court of Appeal against the Home and Foreign Secretaries 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 recent authorities include Babbage which established that the Home Secretary could not continue to detain detainees to seek their prosecution for failing to co-operate with removal and 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 firm 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 Immigration and Asylum Chamber of the Upper Tribunal granted general relief, ruling unlawful a major plank of Home Office immigration policy, the No Recourse to Public Funds 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 Duties 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.

Immigration - Business and Commercial

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 has a special expertise in EU freedom of movement and rights of establishment, 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 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).

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 children, disabled people, 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.

Recent 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 major implications for the provision of community care by local

authorities, those granted Article 8 leave being disproportionately vulnerable, including families with children. The Home Secretary was held to have breached her Public Sector Equality Duties (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 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. He has acted recently 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.

Corporate Governance and Policy

Mark's practice covers a range of corporate governance and policy issues, from high profile cases to confidential high level policy and procedural advice. His work in this field draws upon his expertise in freedom of expression, media and defamation, privacy, freedom of information, data protection, election law, standards and disciplinary codes, public and constitutional law including human rights and procedural fairness/natural justice, and equality and discrimination issues, including the Public Sector Equality Duties.

Recent cases have included Foster v McNicol and Corbyn, 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 its National Executive Committee's ruling that the Leader of the Labour Party did not need MPs' nominations to stand in a leadership election triggered by a challenge to the incumbent. The Labour Party had separately instructed a QC and Mark to advise the NEC on the correct interpretation of the rules and they gave conflicting opinions. The NEC ruling

followed Mark’s view. Mr Foster’s High Court challenge contended 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 in the leading authority of Heesom on standards regimes applying to local governance, in which the High Court gave extensive guidance on the rights and duties of local councillors vis a 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 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 local government standards regime in Wales.

He is regularly instructed to advise on policies and standards codes, regulatory regimes, and disciplinary processes, including as to procedural fairness, freedom of expression and defamation, and privacy and data protection. He deals with corporate defamation claims, and is instructed to advise and act in respect of efforts to obtain, to release, and to prevent the release of information and personal data.

His 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 Duties in different spheres, including within public authorities and in respect of contractual arrangements for out-sourcing public services. He has also addressed the identification of non-delegable duties of public authorities in the context of disparate out-sourcing arrangements. His work often draws upon his particular expertise in EU law, which includes presenting cases 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 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.

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).

Freedom of information and Data protection

Mark is instructed in a range of information law matters, and acts for clients seeking both to access and to prevent the release of information and personal data. He has conducted specialist training on freedom of information and data protection.

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.

He also deals with common law breach of confidence, misuse of private information, and 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.

His case of S is a leading authority establishing that a breach of confidence claim can be ventilated in judicial review proceedings, and developing the equivalent public law duty on public authorities when considering release of non-public and sensitive information. It also

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, and that such a claim could be brought and established from outside the jurisdiction. It achieved unprecedented relief.

His information and data protection work draws upon his EU law expertise, including as to the Charter of Fundamental Rights. 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 has won ground-breaking disclosure orders in judicial review, developing the law on disclosure against public authorities in public law cases. He also acts in applications concerning anonymity of litigants and witnesses and whether the publication of evidence should be prohibited.

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).

Equality and Discrimination

Mark deals with equality and discrimination issues across public, human rights, and EU law.

He is expert in the Public Sector Equality Duties (PSED). His leading case of Fakih ruled unlawful the Home Secretary's No Recourse to Public Funds (NRPF) policy by reason of failure to consider the needs of disabled people when formulating the policy. It 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 disable and the impact of any disability. The Home Secretary responded by suspending decision making and then publishing a revised policy and a new Policy Equality Statement. Mark has acted in a number of cases since that contend that she has failed to remedy the unlawfulness found in Fakih 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. A number of cases have raised ground-breaking issues about the contracting out of public services and the application of the PSED when negotiating, operating and enforcing contractual arrangements with commercial providers, including 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. It relied on his earlier case of Rudi for the importance of the common law principle of equality/ non-discrimination in addition to Article 14, which made ”clear ... that the common law and Convention principle essentially walk hand in hand together”.

His work beyond litigation has included serving on a Bar Council working party on its Equality Code, and he was one of the founders of the Bar's LGBT group, BLAGG, in 1994.

International Law

According to Chambers and Partners, Mark "impresses with his top-notch courtroom skills and confidence in both national and international courts". He is regularly instructed in important and complex EU law and ECHR cases, both in national courts and in the Court of Justice of the European Union (CJEU), where he has presented cases before both the Chamber and the Grand Chamber, and in the European Court of Human Rights.

He is experienced in all aspects of proceedings in Luxembourg from reference to judgment. He is also experienced in obtaining orders for references and in formulating and negotiating the terms of a reference from the Administrative Court, Upper Tribunal, and Court of Appeal, and in dealing with disputes following the return of the case to the referring court to give effect to the judgment. 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 CJEU in the landmark case of NS. He was the claimant’s lead advocate in the Grand Chamber in what was amongst the CJEU’s most complex ever hearings, 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. Its constitutional importance extended throughout the EU as it established that Member States’ duties under the Charter override general EU principles of mutual trust and recognition between Member States. He also acted as lead counsel in Onuekwere, on the effect of imprisonment on the rights of EU citizens and their family members in other Member States, and recently, again as lead counsel, in the leading Grand Chamber free movement 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 is also experienced in bringing cases to the European Court of Human Rights, including obtaining urgent interim measures against the Government. Ongoing cases that have been communicated by the Strasbourg Court to the UK include the important freedom of expression case of Gaunt, in which the Court is considering Ofcom's scope to rely on offensiveness to the broadcast audience as a basis for adverse rulings that interfere with political speech.

Recent cases in Strasbourg include Paulet, in which he acted as lead counsel in what was, in effect, the appeal from the Court of Appeal judgment dismissing his appeal against conviction, which was 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. 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 of the extra territorial application of the ECHR to conduct outside the jurisdiction on behalf of persons outside the jurisdiction.

He regularly deals with international criminal law, public international law, and private international law in his cases in 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 acts and advises solicitors on costs, public funding and regulatory issues.

He has acted and advised extensively in relation to Inter Partes costs, from applying for costs, including indemnity costs and payments on account from the Court, to conditional fee agreements, Part 36 offers, and all aspects of detailed assessment from disputes about whether assessment should take place in the SCCO, negotiations and Part 36 offers on costs, applications for interim payment, disclosure of file records and privilege, through to written and oral submissions to the Costs Judge.

He advises solicitors on contractual issues with the Legel 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 handling by the Legal Services Commission, Ministry of Justice, and Home Office of the national legal services provider, Refugee and Migrant Justice, going into administration leaving about 10000 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 exceptional interim measures by the Home Office to preserve their position.

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

National Security

He has acted at the highest level in two of the leading national security appeals. RB (Algeria) involved whether the Special Advocate procedure in terrorism cases in SIAC violated Articles 3 and 6 and common law constitutional principles. He also acted for a coalition of NGOs in the internationally acclaimed case which ruled that evidence obtained through torture was inadmissible even in national security cases, A No. 2.

He also acted as leading junior in the leading case on whether a Special Advocate or PII Advocate should deal with FCO disclosure of closed material in the context of a PII process in a country guidance case (CM (Zimbabwe)).

Significant Cases

Court of Justice of the European Union and European Court of Human Rights:

- 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:

- 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).