



Year of Call

1996

Year of Silk

2011

Devil Masters

RBM Howie QC

RG Clancy QC

Practice Profile

Kenneth has appeared in courts and tribunals at all levels across Scotland as well as on a number of occasions before the UK Supreme Court. His varied practice covers a range of areas of civil work. Kenneth's public law practice includes judicial review, immigration and education cases. He has appeared in a number of important appeals about permanence orders relating to children. In his wide-ranging mental health litigation work he has acted for the Mental Health Tribunal for Scotland as well as patients and health boards. Kenneth has also regularly been involved in professional negligence cases (usually involving medical professionals) and commercial disputes of all kinds. In addition, he has experience of some areas of tax.

As a Standing Junior to the Advocate General from 2002 to 2012, Kenneth conducted a range of public law, reparation and other cases, largely for the Home Office, Ministry of Defence and HMRC.

Kenneth is also a practising member of the English Bar. His chambers are at Lamb Building (www.lambbuilding.co.uk). In addition to practice at the Bar, Kenneth is an experienced advocacy skills trainer.

Kenneth has experience of non-judicial dispute resolution. He is a CEDR-accredited mediator, and a Fellow of the Chartered Institute of Arbitrators (FCIArb). He is currently convenor of the Faculty of Advocates Dispute Resolution Service (FDRS).

Education & Professional Career to Date

Fellow of the Chartered Institute of Arbitrators (FICArb)

Solicitor, Litigation, Brodies WS, Edinburgh (1991-95)

Trainee Solicitor, Dickson Minto, Edinburgh and London (1989-91)

Appointments

- Legal Member of the Mental Health Tribunal for Scotland (2016–present)
- Member of the Scottish First Tier Tribunal (Tax Chamber) (2015–present)
- Ad hoc Advocate Depute (2011–present)
- Standing Junior to the Advocate General's Office (MOD and Home Office) (2002–2012)
- Director of Training & Education, Faculty of Advocates (2002–2005)
- Chairman of the Scottish Council of Law Reporting (2017–2019)
- Member of the Scottish Civil Justice Council (SCJC) (2017–present)
- Course Leader & Senior Tutor in Civil Court Practice, Edinburgh University (2009–2017)

Selected Cases

- **TF and MA v The Secretary of State for the Home Department [2018] CSIH 58**
Immigration appeal which clarifies the law about evidence of religious conversion in immigration appeals
- **North Lanarkshire Council v KR [2018] CSIH 59**
Correct approach to decision making where threshold test for permanence order met
- **McCann v State Hospital [2017] UKSC 31**
Defence of smoking ban at the State Hospital
- **EV (a child) [2017] UKSC 15**
Correct approach to fact-finding in child permanence order cases
- **Petition of TM for Judicial Review [2017] CSOH 19**
Application of Art 3 ECHR in asylum claims involving suicide risk
- **Petition of GO for Judicial Review [2017] CSOH 9**
EU free movement rights and homelessness assistance
- **Beggs v Scottish Ministers 2015 SLT 487; [2016] CSOH 80**
Art 8 ECHR and interference with prisoners' legal correspondence
- **Al Khatib v Secretary of State Home Department [2016] CSIH 85; 2017 SLT 8**
EU Qualification Directive rights and stateless persons
- **G v Mental Health Tribunal for Scotland [2013] UKSC 79**
First UK Supreme Court decision on operation of the test for exercise of discretion by a tribunal in making order under s 264 relating to a restricted patient
- **Black v Mental Health Tribunal for Scotland [2012] SC 251**
Clarifying the position of curator ad litem in mental health appeals
- **WS v Mental Health Tribunal for Scotland [2011] SC 43**
Rights of appeal for cross-border transfer patients
- **Scottish Ministers v Mental Health Tribunal for Scotland, re MM [2009] CSIH 66**
Clarifying the operation of "Serious harm" test and mental health legislation
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Scottish Ministers v Mental Health Tribunal for Scotland, re JK [2009] SC 398

Clarifying the operation of "Serious harm" test and mental health legislation

- **Laurie v Mental Health Tribunal for Scotland (unreported), 30 August 2007, Sheriff Principal Kerr QC**

Extent to which Mental Health Tribunal has inquisitorial role

- **McGowan v B [2012] SC (UKSC) 182**

Post Cadder case about waiver of Convention rights and about Convention rights time-bar

- **HMA v Jude and others [2012] SC (UKSC) 222**

Post Cadder case about waiver of Convention rights and about Convention rights time-bar

- **Petition of C [2012] SLT103**

Decision on transfer of body of deceased serviceman

- **Lyons v State Hospital Board [2011] SLT 233**

Review of patient food management policy at State Hospital, and extent of Article 8 health reservation

- **Petition of HS for judicial review [2009] CSOH 124; 2009 SLT 1087**

Relationship between UN Convention on the Rights of the Child and UK immigration law

- **Scottish Widows v HMRC [2011] BTC 413**

Taxation of life assurance companies

- **Simpson & Marwick v HMRC [2013] CSIH 29**

VAT bad debt relief on unpaid professional fees

- **Phoenicia Asset Management SAL v Alexander [2010] CSOH 71**

Recovery of fee by haver who holds substantial documents by virtue of being liquidator of company

Areas of Practice

- Clinical and Professional Negligence
- Commercial
- Family
- Personal Injury
- Property
- Public and Fatal Accident Inquiries
- Public Law
- Taxation

Publications & Seminars

Regular blogger on public law and constitutional law topics

Author of chapters in Mental Health and Scots Law in Practice, Joanna Cherry QC and Professor Lindsay Thomson (Eds.), Sweet & Maxwell, (second edition 2014)

Author of chapters 'The Court of Session', 'Civil Jury Trial' and 'The Procedure Roll' in Court of Session Practice, Bloomsbury Publishing, loose-leaf, 2005-date

'Protective expenses orders: where have we got to?' 2014 SLT (News) 19

'Security for costs from insolvent companies', Journal of Business Law, 2000

'Access to European Community Official Information', International & Comparative Law Quarterly, 46, 1997

'Additional damages for breach of copyright: the approaches of Scotland and England compared', European Intellectual Property Review, 9, 1997