



## NICK GARDINER



### Year of Call

2001

### Devil Masters

Lord Young

Ronnie Clancy KC

Robert Anthony KC



## Practice Profile

Nick has a mixed practice, which primarily involves personal injury and commercial work. Through his personal injury work, Nick has experience of cases involving accidents at work, industrial disease and road traffic accidents. His clinical negligence experience includes cases involving cerebral palsy. Nick has also advised on insurance issues, including contractual indemnities.

Nick's commercial work has covered contract disputes, construction cases, heritable property disputes and company disputes, and his input has extended to advocacy and advice. Nick has experience of professional negligence claims (solicitor, architect). In his employment work, he has acted for claimants and respondents.

Nick has also had success with mediation in his practice.

Between 2007 and 2009, Nick acted as Crown Counsel in *Al Megrahi v HMA* (the second Lockerbie appeal). This involved hearings before the Court of Appeal in connection with devolution, the scope of the appeal and whether the original jury decision was reasonable.

From 2009 until 2012, Nick acted as one of the counsel to the Penrose Inquiry. He helped with producing the preliminary report of the inquiry and was responsible for leading evidence on certain areas that the inquiry was investigating.

## Education & Professional Career to Date

Associate, Brodies LLP, Edinburgh (1995-2000), based in the Court Department

Assistant, Bishop & Robertson Chalmers, Glasgow (1994-95)

Trainee Solicitor, Biggart Baillie & Gifford, Glasgow (1992-94)

LLB and MA (Hons) French Studies, 2:1 (Aberdeen); Diploma in Legal Practice (Glasgow)

## Appointments

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- Part-time legal member of the Pensions Appeal Tribunal for Scotland (2018–present)
- Counsel to the Penrose Inquiry (2009–2012)
- Crown Counsel in the second Lockerbie appeal (2007–2009)

## Selected Cases

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- **Webster v Taylors Industrial & Bill Mackie Engineering Ltd, 2015**

Personal injury. This case involved an accident on a ship when the pursuer fell from a gangway and sustained a serious injury.

- **Alexia Spiers v. Ayrshire & Arran Health Board**

Clinical negligence. This was a fatal case which involved the failure to diagnose and treat sepsis on admission to a hospital. As a result of this failure the patient died. Claims were made against the treating accident & emergency doctor, a high dependency unit doctor and an intensive care unit Consultant.

- **STV Central Ltd v Semple Fraser LLP (in liquidation) and CBRE Ltd [2015] CSIH 35**

Professional negligence. This was an action against solicitors who were acting in the drafting of a complex commercial lease. The action arose out of an error in a rent review clause in a lease which was linked to the retail price index and which had the effect of increasing the sum payable by the tenant in an exponential manner. The solicitors admitted liability and paid a substantial sum to their client STV and sought a contribution from CBRE. The third party claim against the surveyors was settled.

- **Alexis Allan v Lothian Health Board, 2015**

Clinical negligence. This case involved the failure to diagnose the development of papilloedema due to a malfunctioning intracranial shunt. The increase in intracranial pressure damaged the pursuer's optic nerves and caused her to go blind. Claims were pursued against treating neurosurgeons, neurologists and psychiatrists.

- **Janet Telfer v Royal Mail, 2014**

This was an occupational stress at work and Protection from Harassment Act case. The pursuer had been bullied and harassed over a period of years and had developed a psychiatric condition which caused her to give up work.

- **Colleen Smith v Wood Group plc, 2014**

Personal injury. This was a fatal case involving the death of a worker from mesothelioma allegedly contracted when working on steam ships and trawlers in Aberdeen in about 1960. The claim was defended on the basis of date of knowledge.

- **Penrose Inquiry, 2009-12**

Public and fatal accident inquiries. Appeared as counsel to a public inquiry under the Inquiries Act 2005 into the circumstances around NHS patients becoming infected with HIV and hepatitis C viruses through the use of blood products

- **Macintosh v Highland Health Board, 2010**

Clinical and professional negligence. Appeared for the pursuer in a high value clinical negligence case involving cerebral palsy

- **Megrahi v HMA [2008] HCJAC68**

Crime. Appeared as Crown Counsel in the second Lockerbie appeal against conviction. This

involved appearances at hearings on the scope of the appeal, public interest immunity, an application for bail and whether the verdict of the original trial court was one that a reasonable jury could have returned

- **Simmers v Innes [2008] SC (HL) 137**

Commercial. Appeared for the defender in the Outer House, the Inner House and at the House of Lords in a commercial action about the operation of a buyout option in a property contract

- **Robb v Salamis (M & I) Limited [2007] SC (HL) 71**

Personal injury. Appeared for the defenders in the Inner House and at the House of Lords in a personal injury case that interpreted the Work Equipment Regulations in an accident on an offshore oil rig

- **Glasgow Airport v Messrs Kirkman & Bradford [2007] CSIH 47 [2007] CSOH 52**

Clinical and professional negligence. Appeared for the defenders in the Outer House and the Inner House in a commercial action concerning architect's negligence and the construction of a collateral warranty

- **Stewart v Matalan Retail Limited [2006] CSOH 167**

Personal injury. Appeared for the defenders in the Outer House in a tripping case involving the Workplace Regulations

- **Amalgamated Roofing and Building Co v Wilkie [2004] SLT 509**

Commercial. Appeared for the pursuers in the Outer House in a case about the proportionality of inhibiting on the dependence of an action

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## Areas of Practice

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- Clinical and Professional Negligence
- Commercial
- Crime
- Employment, Discrimination and Harassment
- Personal Injury
- Property
- Public and Fatal Accident Inquiries

## Directories

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Recommended in the Chamber and Partners UK Bar Guide 2024:  
Clinical Negligence & Personal Injury

"Unflappable, diligent and analytical."

"He is perceptive, diplomatic and tireless in his pursuit of a solution for his clients."

"He will leave no stone unturned in researching cases"

Recommended in the Legal 500 UK Bar Guide since 2016:  
Personal Injury and Medical Negligence - Leading Junior

"He is unafraid to fight a case"

"Nick demonstrates a thorough understanding of the facts and has a very analytical eye. He is an effective advocate."

## Additional Information

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French, Spanish

Familiar with use of large databases