



## NEIL MACKENZIE KC



### Year of Call

1999

### Year of Silk

2019

### Devil Masters

Rory Anderson KC

Miss ME Scott KC (now Lady Scott)

## Practice Profile

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Neil specialises in the areas of professional negligence and industrial disease, and is predominantly instructed in complex, high value medical negligence actions. He acts for both pursuers and defenders across a range of subject matter that includes neurosurgery, general surgery, obstetrics and orthopaedics. Neil also deals with a large volume of other reparation claims. He is regularly instructed in industrial disease actions, in particular concerning asbestos. His experience of solicitor's negligence cases is extensive. In medical negligence and industrial disease actions, Neil must often deal with complex and difficult issues of causation. Neil regularly appears in Court in various different forums, with extensive experience of the Outer and Inner Houses of the Court of Session and a recent appearance in the UK Supreme Court.

## Education & Professional Career to Date

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Traineeship (assigned), More & Co, (1998)

Trainee Solicitor, Morton Fraser (1996-98)

LLB (Hons), 2:1; Diploma in Legal Practice

## Appointments

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- Keeper of the Library, Faculty of Advocates (2022–present)
- Director of Training and Education, Faculty of Advocates (2017–2021)

## Selected Cases

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- **O'Grady v NHS Greater Glasgow and Clyde [2022] SC Edin 29**

A decision after Debate in a Sheriff Court medical negligence case following which the Action was dismissed. Neil represented the third defenders.

- **B v English Province of the Congregation of Christian Brothers 2022 GWD 18-265**

A decision after Proof in a high value Sheriff Court case concerning historic child abuse following the introduction of s17A-D of the Prescription and Limitation (Scotland) Act 1973, involving complex issues of the treatment of historic evidence, diagnosis, causation, and quantum. Neil represented the defenders. This decision is under appeal.

- **Kennedy v Bonnici 2022 SLT 63**

a decision after Debate in a high value Court of Session case concerning historic child abuse following the introduction of s17A-D of the Prescription and Limitation (Scotland) Act 1973 involving novel and complex issues of trust law, insurance law, and vicarious liability. Neil represented the defenders and the Preliminary Proof following Debate is due to be heard in January 2023.

- **T v English Province of the Congregation of Christian Brothers 2022 SLT (Sh Ct) 108**

A decision after Proof in a high value Sheriff Court case concerning historic child abuse following the introduction of s17A-D of the Prescription and Limitation (Scotland) Act 1973, involving complex issues of the treatment of historic evidence, diagnosis, causation, and quantum. Neil represented the defenders.

- **A v Glasgow City Council 2021 SLT 1577**

A decision after Proof in a high value Court of Session case concerning historic child abuse following the introduction of s17A-D of the Prescription and Limitation (Scotland) Act 1973, involving complex issues of the treatment of historic evidence, diagnosis, causation, and quantum. Neil represented the defenders.

- **Quinn's Executor v Wright's Insultations Ltd 2020 SCLR 731**

A decision after Preliminary Proof concerning asbestos related disease. Neil represented the defenders and the Action was dismissed.

- **Gillies' Executrix v Arjo Wiggins Ltd 2020 SLT (Sh Ct) 53**

A decision from the Sheriff Appeal Court on procedure and limitation. Neil represented the defenders.

- **Gracie v City of Edinburgh Council 2019 Rep LR 63**

A decision after Proof in a high value Court of Session case concerning whether the deceased, a clerk, had been negligently exposed to asbestos in the defenders' factory. Neil represented the defenders.

- **Thacker v North British Steel Group plc 2018 SLT 799**

A decision after Proof in a high value Court of Session case concerning whether the deceased, a clerk, had been negligently exposed to asbestos in the defenders' factory. Neil represented the defenders.

- **Gibson v Babcock International Ltd 2018 SLT 886**

A decision after Proof in a high value Court of Session case concerning whether the deceased had been negligently exposed to asbestos by cleaning the overalls of her husband, who was employed by the defenders. Neil represented the defenders.

- **Forbes v Mclean 2018 SLT 877**

A decision after debate in a high value Court of Session case concerning whether a relevant claim had been made against a discharged executor. Neil represented the defender and the case was

abandoned shortly before Proof.

- **Robert Prescott v The University of St Andrews [2016] CSOH 3**

Mesothelioma case.

- **Annabelle Bell v Alliance Medical Ltd and another [2015] CSOH 34**

Proof, acting as Junior alone, for the pursuer in a medical negligence action against a private healthcare provider who conducted an MRI scan. There was an admitted puncture of her brachial artery during an attempted venous cannulation. The central allegation was whether there were visible signs of an arterial puncture.

- **Ferguson v J&A Lawson (Joiners) Ltd [2014] CSIH 82**

Mesothelioma case. The pursuers sought equitable relief under s19A of the Prescription and Limitation (Scotland) Act 1973, which Lord Uist granted. The defenders reclaimed. The Lord Ordinary's decision was challenged on the basis that he was plainly wrong and erred in law in his treatment of the insurance situation, the speculative nature of the pursuers' funding and whether or not the defenders' insurer had enjoyed a windfall. The Inner House refused the reclaiming motion.

- **Coyle v Lanarkshire Health Board [2014] CSIH 78**

This was a high value medical negligence case involving a child brain damaged at birth. The case was fought on liability and causation. Damages were agreed by a lump sum and Periodic Payment Order. The Lord Ordinary found against the defenders on a very narrow factual basis. The reclaiming motion involved a detailed forensic analysis of the evidence in order to determine whether the Lord Ordinary was plainly wrong

- **Montgomery v Lanarkshire Health Board (UKSC 2013/0136)**

Supreme Court, with Rory Anderson QC. Whether a consultant obstetrician and gynaecologist was negligent in her management of the appellant's pregnancy and labour and, if so, whether this was causative of the child's brain injury. The mother of a child born with cerebral palsy sued a health board alleging that her treating consultant ought to have warned her of risks of mechanical problems occurring during labour. The decision formulates the duty on a doctor to warn patients about the risks of procedures and their alternatives, disapproving the previous statement of the law in this area. It is likely to have enormous significance throughout the healthcare professions.

- **Glancy v Southern General Hospital NHS Trust [2013] CSOH 35**

Proof for pursuer in medical negligence action.

- **Henderson & Anr v Burntisland Shipbuilding Co Ltd & Anr**

Acted as Junior alone for the Defenders in this mesothelioma jury trial, against Senior and Junior Counsel for the Pursuer before Lord Bannatyne. The main issue was whether the stepdaughters of the daughter of the deceased were accepted as his granddaughters. The unanimous verdict was that they were not accepted as the deceased's grandchildren. Accordingly, no damages were payable by the defenders to the pursuers. Verdict reached 26 June 2014.

- **Stewart v Trafalgar House Steamship Co Ltd 2013 S.L.T. 834**

Another mesothelioma case, which went to debate on a question of Private International Law. The issue was whether a non-existent party could be an "anchor defender", allowing the case to proceed in the Scottish Courts when there was no other factor in favour of finding jurisdiction here.

- **Montgomery v Lanarkshire Health Board [2013] CSIH 3**

High value medical negligence case, which is presently being appealed to the Supreme Court. The issue to be decided by the Supreme Court is, principally, about a doctor's duty to warn of significant risks and whether the law in this area should be changed.

- **Hannigan v Lanarkshire Acute Hospitals NHS Trust [2012] CSOH 152**

Decided medical negligence case

- **McLean v William Denny & Bros Ltd [2004] SC 656**

Reported industrial disease case

- **Crossett and others v Upper Clyde Shipbuilders [2008] Rep LR 126**

Reported industrial disease case

- **Cruickshank v Fairfield Rowan Ltd [2005] SLT 462**

Reported industrial disease case

- **Murray's Executrix v Greenock Dockyard Co Ltd [2004] SLT 1104**

Reported industrial disease case

## Areas of Practice

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- Clinical and Professional Negligence
- Personal Injury
- Public and Fatal Accident Inquiries

## Directories

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Chambers and Partners 2024 Bar Guide: Recommended in Personal Injury & Clinical Negligence

"He is good on his feet and very user-friendly." "A very thorough and forensic advocate."

"A really bright guy; he's pragmatic and sensible."

"An extremely skilful, really competitive litigator who is extremely hard-working."

"He is terribly clever, approachable, great in court and also really good with clients."

Recommended in The Legal 500

"He combines technical expertise with practical advice and a persuasive court manner"

## Additional Information

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CEDR-accredited mediator (2008-present)

Talks given to devilling advocates on a wide variety of subjects as part of the Faculty of Advocates Foundation and April Skills Courses (2003-present)

Trained as an instructor by the Faculty of Advocates Training & Education department (May 2007); regularly participates in the training of devils

Presentation concerning aspects of asbestos claims given at a symposium on respiratory medicine organised by the Royal College of Physicians, Edinburgh (2008)