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The Rt. Hon. The Lord Keen of Elie KC



Year of call: **2009**
Appointed to silk: **1993**
Degree: **LLB (Hons) University of Edinburgh**

Richard Keen KC is one of the UK's leading silks, with broad expertise spanning Commercial, Public & Regulatory, Financial Services & Banking and International Law. From 2015-2020 Richard served as the Advocate General for Scotland.

Current and recent work includes:

- Acting for a Chinese shipbuilder/creditor in opposing the recognition in UK under CIBR 2006 of insolvency proceedings initiated in the Singapore High Court of debtor companies with assets in the UK sector of the North Sea.
- Acting for a major supermarket chain in an intellectual property dispute with an international drinks distributor.
- Acting for the applicant in a data disclosure dispute with a US data processor regarding international online betting operations.
- Acting for a party in a £200m+ claim arising out of a corporate disposal and allegations of fraudulent conspiracy involving advisors.
- Advising a German company with respect to the expert determination of an engineering construction dispute arising out of contracts at Grangemouth refinery.
- Instructed in litigation arising out of engineering construction contracts for the new Glasgow hospital.
- Litigating for clients in India with respect to extensive assets in West Bengal, the title to which was registered with a Scottish company which had been in an India High Court administration for many years.

Richard was appointed Advocate General for Scotland on 29 May 2015. For the last three months of David Cameron's ministry he was in addition Minister of State for home affairs.

He was reappointed Advocate General by Theresa May and also appointed Lords Minister for the Ministry of Justice. He retained both appointments until his resignation in September 2020.

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In the latter capacity Richard had responsibility for civil justice in England and Wales and for regulation of the legal profession. He chaired the Lord Chancellor's advisory committee on private international law (alongside the Rt. Hon Lord Mance). He established (with Sir Geoffrey Vos) and was a member of the Lawtec Delivery Panel.

During his time as Advocate General, Richard regularly appeared for the government in the UK Supreme Court; the CJEU and the grand chamber of ECTHR. Some highlights include (more information can be found below):

- R (Miller) v The Prime Minister and Cherry v Advocate General for Scotland (2019)
- R (Miller) v Secretary of State for Exiting the European Union (2017)
- Wightman and others v Secretary of State for Exiting the European Union (2018)

Richard was engaged in taking a number of major pieces of legislation through the House of Lords. These included the Scotland Act 2016 and the European Union (withdrawal) Act 2018.

Richard represented HMG at the council of justice ministers in Luxembourg. He also represented HMG in respect of justice matters in discussions in China; Singapore; Australia; and USA.

Prior to his appointment as Advocate General, Richard Keen KC was regularly instructed in the Commercial Court; in the Inner House (the Court of Appeal in Scotland) and in the Supreme Court in a range of Commercial and Public Law cases. He is highly regarded for his advocacy particularly in complex commercial litigation and cases involving extensive expert evidence in areas including science, engineering and economics. He is also instructed in matters of insurance, company law and civil fraud. He was instructed for the contractors insurance and reinsurance interest in respect of the Piper Alpha disaster. He led the defence of Lamin Fhimah at the trial of Megrahi and Fhimah in respect of the Lockerbie Pan Am bombing. He also acted for Weir Group plc in the claims and prosecution arising out of breaches of the UN Iraq sanctions.

EXPERIENCE

Commercial

Richard is considered to be a first choice of silk for complex commercial litigation. He is widely instructed in claims arising out of corporate takeovers and acquisitions. He is also instructed in shareholder claims, including s.994. He has considerable experience of litigation involving oil and gas licensing and exploitation. He is regularly involved in multi jurisdiction litigation involving interlocutory orders and issues of forum and jurisdiction.

Cases

Administrators of FM Developments Ltd v Milne and Others

(2013)

Richard was instructed on behalf of the Administrators in a £30million claim for breach of directors' duties and unlawful distribution of company funds. The action proceeded in the Commercial Court.

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Project Ling

(2013)

Richard was instructed by the Administrators of an Isle of Man fund in connection with the tracing and recovery of +£200 million of funds distributed through various offshore SPVs. This included litigation in the UK.

SSE Generation Ltd v Hochtieff Solutions AG

(2013)

Richard was instructed by SSE in a +£100 million contract dispute arising out of the construction of a hydro electric scheme. The action proceeded in the Commercial Court.

Project Neptune

(2013)

Richard was instructed in a long running arbitration arising out of a contract for the refurbishment/rebuilding of a government base.

ICL v Johnston Oil plc

Richard was instructed by insurers in a contribution claim arising out of fatal factory explosion. The action proceeded in the Commercial Court.

Lloyds TSB Foundation v Lloyds Banking Group plc

Richard appeared for the Foundation in the UKSC in an action involving the construction and application of an agreement for the funding of the Foundation by the Bank.

Soccer Savings plc v Scottish Building Society

(2013)

Action in the Commercial Court with respect to the enforcement/attempted reduction of a contract for the operation of a football supporters savings scheme.

Kivuwatt Ltd v Dane Associates Ltd

(2012)

Richard appeared for Dane in the Commercial Court and Court of Appeal in a successful application for the recall of interlocutory orders relating to an ICC arbitration involving a contract for the funding and construction of a power station in central Africa.

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Cosalt Plc and GTC Group Limited v Melville and Others

(2012)

Richard was instructed for Cosalt and GTC in a series of claims arising out of the acquisition of GTC by Cosalt. These involved claims for fraud, breach of contract and breach of covenant. The claims were the subject of a multi million pound settlement.

Stokers SA v Echelon Wealth Management Limited and Alexander

(2012)

Richard was instructed on behalf of a Swiss group with respect to claims arising out of fraudulent transactions in respect of Contracts For Difference. The action was successfully concluded in the Commercial Court.

BSA International SA v Irvine and Others

(2011)

Richard acted on behalf of the defendants in a claim for damages in respect of breach of warranty in a share purchase agreement. A challenge to the warranty claim was heard in the Commercial Court. The claimants then appealed and recently settled the case prior to the hearing of the appeal.

Heineken UK Limited v RBS plc

(2011)

Richard was instructed on behalf of the Royal Bank of Scotland in a litigation challenging the validity of loan guarantees. The case concerned the scope of the bank's right to renew or renegotiate loan terms pursuant to a standard term of their loan agreement, without notice to guarantors.

RBS plc v Carlyle and Others

(2011)

Richard was instructed on behalf of the Royal Bank of Scotland with respect to an appeal from the Commercial Court involving the alleged existence of collateral agreements to commercial loan transactions.

G4S Cash Centres (UK) Limited v Clydesdale Bank plc

(2011)

Richard was instructed on behalf of the bank with respect to claims involving the construction and application of a services agreement for the distribution of the bank's cash throughout the United Kingdom.

tie Limited v Bilfinger Berger and Others

(2011)

Richard was instructed on behalf of tie with respect to claims arising out of and in respect of the construction of the Edinburgh Tram Network.

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Bayer CropScience KK v Albaugh Inc

[2011] CSOH 158

This claim involved registration and exploitation of a product after patent expiry in the United States of America. The timing of registration was achieved by means of testing in the United Kingdom which involved patent infringement. Richard acted for Bayer who sought a springboard accounting of profits. A preliminary decision of the Court in 2010 established the precedent for securing a springboard accounting of profits in such circumstances.

Granville Cooper v Merck Sharp and Dohme Limited and another

(2010)

Richard was instructed by Merck in connection with claims arising out of the licensing, prescription and use of the drug Vioxx in the United Kingdom. The United Kingdom claimants were dismissed from a class action in the United States of America which was settled upon payment of $4.8 billion.

Tullis Russell Limited v Inveresk plc and Inveresk plc v Tullis Russell Limited

(2010)

Richard appeared on behalf of Tullis Russell in these cross actions which concerned claims and counter claims arising out of an acquisition agreement and services agreement. Tullis Russell's claim for damages was completely successful following proof in the Commercial Court. Tullis Russell took their defence of the Inveresk claim to the Supreme Court where they were successful on legal arguments relating to the construction of their agreement and a plea of retention. Inveresk then abandoned their action.

Tor Corporate AS v Sinopec Group Star Petroleum Co Limited

[2010] CSOH 76

Richard appeared for Sinopec in this long running litigation involving the management of the Kan Tan drilling rigs in the North Sea and Gulf of Mexico. Following a six month arbitration, in which Richard appeared, Tor brought proceedings for judicial review which they subsequently abandoned. Tor's remaining claim for damages came before the Commercial Court in 2010. The major part of that claim, amounting to £64 million, was dismissed.

Venture Drilling Inc v Larsen Oil and Gas

(2010)

Richard appeared on behalf of Larsen in interlocutory proceedings in the Commercial Court involving the charter and operation of an oil drilling vessel in West Africa. This involved matters of proper law, jurisdiction and forum in the context of a Russian registered vessel, chartered to a Norwegian company, licensed in Sierra Leone and operated from Aberdeen in Scotland.

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Autolink Concessionaires (M6) Plc v Amey Construction Limited and Others

[2010] SCIH 14

Richard was instructed on behalf of Autolink in a litigation involving the determination of the repair and maintenance obligations under a long term DBFO contract for the M6 and M74. Autolink were successful at first instance and upon appeal. The quantification of their claim was then agreed. The case involved the consideration of extensive expert engineering evidence from both UK and US experts.

Morrison Sports Limited v Scottish Power

(2010)

Richard was instructed to appear on behalf of Scottish Power in the Supreme Court in a lead case to determine the issue of civil liability arising out of breaches of the power regulations. The action against Scottish Power was dismissed.

Petition Robertson in re RM (Supplies) Ltd

[2010] SCOH 23; CSIH 58

Richard was instructed for the Petitioner in this s.994 application re unfair prejudice to a minority. The Petitioner secured an order to purchase the shares of the majority directors and secured control of the company. He secured a further order for deduction from the share purchase price of the multi million pound loss which had been made on FOREX contracts entered into without his knowledge. The majority directors eventually abandoned an appeal to the Supreme Court.

Petition Melanie Wood in re Flamingo Land Ltd

(2010)

Richard was instructed for the Petitioner in this s.994 application re unfair prejudice to a minority. The application was initially defended on the merits but after a series of interlocutory hearings in the Commercial Court the Petitioner's shares were purchased by the company.

Financial Services & Banking

Richard is regularly instructed in litigation involving banks and other financial institutions. His work includes claims arising out of joint venture agreements, service agreements and guarantees.

Highlights include:

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Cases

Heineken UK Limited v RBS plc

(2011)

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RBS plc v Carlyle and Others

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Richard was instructed on behalf of the Royal Bank of Scotland with respect to an appeal from the Commercial Court involving the alleged existence of collateral agreements to commercial loan transactions.

G4S Cash Centres (UK) Limited v Clydesdale Bank plc

(2011)

Richard was instructed on behalf of the bank with respect to claims involving the construction and application of a services agreement for the distribution of the bank's cash throughout the United Kingdom. The case is at present the subject of appeal.

Stokers SA v Echelon Wealth Management Limited and Alexander

(2011)

Richard was instructed on behalf of a Swiss group with respect to claims arising out of fraudulent transactions in respect of Contracts For Difference.

Public & Regulatory

Richard is frequently instructed in matters of judicial review, including challenges to primary legislation of the Scottish Parliament.

He has also advised a number of power companies in connection with OFGEM investigations with respect to supply contracts.

Richard advised on the issue of international spectrum allocation in connection with the 4G auction process.

Highlights include:

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Cases

R(Miller) v The Prime Minister and Cherry v Advocate General for Scotland

(2019)

The Supreme Court heard arguments in the legal challenge to the prime minister, Boris Johnson's decision to prorogue Parliament. Richard acted on behalf of the Advocate General of Scotland.

Wightman and others v Secretary of State for Exiting the European Union

(2018)

Richard acted for the Government in this case concerning a judicial review raised by a group of politicians who are seeking clarification on when and how the UK notification to leave the European Union could be unilaterally revoked before the two-year Brexit deadline on 29 March 2019, or whether it needs the unanimous consent of the 27 other Member States to do so.

R(Miller) v Secretary of State for Exiting the European Union

(2017)

Supreme Court case concerning whether the Government could give notice under Article 50 using its prerogative powers to enter into and withdraw from international treaties without securing authorisation from Parliament. Richard acted for the Secretary of State for Exiting the European Union.

Tesco Ltd v Aberdeen City Council

(2013)

Richard appeared for Tesco in an application for the suspension of a Local Development Plan and related proceedings for review of a planning decision. The planning authority ultimately withdrew their opposition to the JR.

Cairn Energy plc v Greenpeace International

(2013)

Richard appeared for Cairn in proceedings to prevent disruption of oil exploration activity in Greenland waters.

Imperial Tobacco Ltd v Lord Advocate for the Scottish Government

(2012)

Richard appeared for Imperial in the UK Supreme Court in a challenge to legislation banning the display of tobacco products.

Perry v SOCA

(2012)

Richard appeared in the UK Supreme Court for SOCA in proceedings to determine the scope of legislation with respect to the proceeds of crime.

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Petition Axa General Insurance Ltd and Others

(2012)

Richard was instructed on behalf of Axa and other insurers in respect of a challenge to the legality of an Act of the Scottish Parliament which would impose an obligation upon insurers to indemnify claims in respect of pleural plaques as claims for personal injury which they insured against. The challenge was advanced on both common law and ECHR grounds.

Petition X in re Scottish Ministers

(2011)

Richard recently acted on behalf of a major retailer in respect of a proposed challenge to the Non-Domestic Rates (Levying) (Scotland) (No.3) Regulations which would have imposed a significant rates supplement on large retail premises. In addition to a general vires challenge there were issues with respect to Article 107 TFEU (state aid) and Article 49 TFEU (freedom of establishment). The Regulations were withdrawn.

Petition Y in re Glasgow City Council

(2011)

Richard acted on behalf of a major developer in challenging an attempt by Glasgow City Council to employ The Tax Increment Finance Initiative in support of a competing retail development.

A v Scottish Ministers

(2010)

Richard was instructed for the Scottish Ministers to oppose an application for review in respect of the notification requirements of the Sexual Offences Act 2003. The application was refused at first hearing but ultimately granted in a conjoined appeal to the Supreme Court.

ACHIEVEMENTS

Education

LLB (Hons) University of Edinburgh

Memberships

- Member of the Faculty of Advocates
- Member of the Bar of England and Wales
- Bencher of the Honourable Society of the Middle Temple

• Dean of Faculty 2007 - 2014

VAT registration number: -

Barristers regulated by the Bar Standards Board