

TANFIELD

PROPERTY & REAL ESTATE BARRISTERS



Iain G Mitchell KC

Year of call Silk

1976 1992 (Scotland)

Iain G Mitchell KC, was called to the Scottish Bar in 1976, and took silk in 1992. He was called to the English Bar and commenced practice in England in 2012. He was accredited as a mediator by the Mediation Bureau (Scotland) in 1997 and by Mediation Forum Ireland in 2007. He is a member of the Scottish Council for International Arbitration and sat on the bench as a Temporary Sheriff from 1992 to 1997.

Iain is an experienced litigator with a wide and varied civil practice, with strengths in Business and Banking law, European Law, Public Procurement Law, Employment Law and Public Law, as well as being rated by Chambers Directory in Band 1 for both Information Technology and Public Procurement law and the only Scottish Silk recommended by the Legal 500 for Intellectual Property and Information Technology Law.

He has appeared in over 60 reported cases, including two in the House of Lords: **Moncrieff v Jamieson [2007] 1WLR 2620** (the leading modern case on easements) where he succeeded in definitively establishing the existence of an easement of parking in the laws of both Scotland and of England and **Clarke v Fennoscandia Ltd 2008 SC (HL) 122**, a case concerning the enforcement of foreign decree allegedly obtained fraudulently in the US Third Circuit, and involving issues of Scots, English, French, European, United States, and Colorado law. He is currently heavily engaged in litigations in both England and Scotland seeking redress for bank customers in cases of alleged mis-selling of Interest Rate Swap Agreements, having acted for the claimants in **Grant Estates Ltd v Royal Bank of Scotland Ltd [2012] CSOH 133**, the first of such cases to be decided. He is also a leading member of QA legal, an international grouping of barristers, solicitors, financial experts and others who are pre-eminent in this field.

His work is informed by extensive practical experience in business, the charitable and voluntary sectors, politics, and his keen interest in the arts and heritage. His sensitivity to commercial realities has frequently been commented upon and this, together with his substantial experience, enables him to develop innovative solutions, giving holistic advice which places the needs of clients in a wider commercial setting.

Business & Commercial

Iain has vast experience in this area of practice, extending back over his long career at the bar. He has acted for and advised individuals, small businesses and large corporations and is presently heavily involved in acting in both England and Scotland seeking redress for bank customers in cases of alleged mis-selling of Interest Rate Swap Agreements and Tailored Business Loans. He is highly regarded for his sensitivity to commercial realities and for focussing upon clients' needs. His approach is rooted in the understanding that commercial litigation is not an end in itself but must be seen in a wider business context.

IP & IT Law

The only Scottish silk recommended by the Legal 500 in this practice area, Iain has acted for and advised individuals, small businesses and large corporations. His litigation or advice work has ranged over every aspect of the field, including copyright, software patents, passing off, trade mark infringement, registered industrial designs, plant breeders rights, software licensing, file sharing, video streaming, and internet defamation. He is a member of the European Legal Network (a world-wide grouping of lawyers with a particular interest in Open Source Software); and, as well as being the Chairman of the Scottish Society of Computers and Law, and of the Faculty of Advocates IT Group, he is also Joint Editor of the International Free and Open Source Law Review, a Liveryman of The Worshipful Company of Information Technologists and a Member of the Honorary Board of ITM Lecturers, Institut für Informations-Telekommunikations- und Medienrecht, Westfälische Wilhelms-Universität, Münster, Germany.

He is also the only Scottish silk recommended by Chambers Directory in IT law, where he is rated in Band 1. He is recognised by the European Commission as an expert in matters relating to Open Source Software Licensing, IT procurement and Cloud Computing and has participated in Conferences and seminars in Brussels at the Commission's invitation.

Employment

He has recently been involved in widely publicised and high-profile work in this area, having advised the Scottish Young Lawyers' Association on whether legal trainees can be made redundant, and having appeared for the Faculty of Advocates Free Legal Services Unit to help bring to a close a nine year legal battle on behalf of a client, Clarence Bvunzai in his racial discrimination case against the City of Glasgow Council. Appeal Court judge, Lord Reed said of him: "The willingness of counsel and solicitor to provide their services reflects the best traditions of the legal profession and was of great assistance to the court." He is

also a member of the Equality Commission's Panel of Advocates.

European Law & Public Procurement

His work in this area has included Freedom of Movement of persons, goods and capital, enforcement of judgements (including, in the House of Lords, aspects of the case of *Clarke v Fennoscandia Ltd* 2008 SC (HL) 122; and, in the Inner House of the Court of Session (the Appeal Court) questions relating to security for costs in relation to EU litigants.) He has a particular expertise in European Public Procurement, having advised upon or litigated questions as diverse as Home Office procurement of security fencing, NHS competitive tendering, local authority procurement of scientific services, and, most significantly, the recent leading case on below and above threshold tendering rules, *Sidey v Clackmannanshire Council and Pyramid Joinery and Construction Ltd* [2010] CSIH 37.

Public & Administrative Law

Iain has extensive experience of Election and Parliamentary Law, having served for about ten years as the Honorary Secretary of the Scottish Conservative and Unionist Association (and having fought numerous Westminster, Scottish and European Parliamentary Elections as a candidate). As Counsel he has advised on questions of election expenses, media coverage during elections, and has appeared in several Parliamentary boundary inquiries and an Election Petition.

He has a growing reputation in the field of Judicial Review, having been involved in a number of cases, including Local Authority placement of individuals in Care Homes, the placing of children on the "at risk" register and provision of NHS out of hours care as well as Judicial Reviews concerning the refusal of the Minister to undertake an enquiry into NHS out of hours care in Highland Perthshire, and seeking to challenge Part 3 of the Land Reform (Scotland) Act as ultra vires of the Scottish Parliament as infringing the European Convention on Human Rights.

Notable Cases

Grant Estates Ltd v Royal Bank of Scotland Ltd [2012] CSOH 133

The leading Scottish authority on interest rate swap mis-selling by banks.

Sidey v Clackmannanshire Council & Pyramid Joinery & Construction Ltd 2010 SLT 607
A leading Scottish authority on EU Procurement Law.

Bvunzai v Glasgow City Council [2009] CSIH 93
Employment law – effect of supervening tribunal application on related question.

Clarke v Fennoscandia Ltd 2008 SC (HL) 122
Enforcement of foreign judgements.

Moncrieff v Jamieson 2008 SC (HL) 1; [2007] 1WLR 2620
Leading case on easements, establishing existence of an easement of parking in both Scotland and England.

Recommendations

"He is terribly practical; he understands what the client's reality is and finds a way to make it work. He gets a kick out of the intricacies of the law and finding new solutions. A joy to deal with."

Chambers Scotland 2021 (Information Technology)

"He is fantastically intelligent and sees very quickly what is important in a case." "He is terribly practical and really nice to deal with. He gets a kick out of the intricacies of the law and finding new solutions."

Chambers Scotland 2021 (Intellectual Property)

"He's very practical. He's got an ability to take a large amount of information and distil it to its original essence. A pleasure to work with."

Chambers UK 2017

"He's very practical, pleasant to work with and he's got an impressive ability to take a large amount of information and distil it to its original essence."

Chambers UK 2017

"Very intelligent and willing to go for ambitious arguments with great success. He will push the boundaries where necessary."

Chambers UK 2017

"True genius – he delivers innovative, off-the-wall solutions other counsel would never mention."

Chambers UK 2013

"He understands the key issues."

Legal 500

"Recommended for IT-related intellectual property matters."

Legal 500

An "exceptionally bright silk" who is "hugely knowledgeable on IT issues."

Chambers UK 2013

"He is a man of high intellectual capability who leads where others follow."

Chambers UK 2011

Appointments

- Member, Bar Council ad hoc working party on EU Data Protection Reform package (2012-2014)
- Member IT Panel, Bar Council of England & Wales (2011-date)
- UK Representative, IT Committee, CCBE (2011-date)
- Admitted as Liveryman, Worshipful Company of Information Technologists (2010)
- Honorary Lecturer, Institut für Informations-Telekommunikations- und Medienrecht, Westfälische Wilhelms-Universität, Münster, Germany (2009-date)
- Member, Church & Society Council, Church of Scotland (2009-date)
- Admitted as Freeman, Worshipful Company of Information Technologists (2008)

- Member, Scottish Courts Technology Forum (2005-2009)
- Member, Panel of Approved Counsel, Equality Commission (2004-date)
- Member, Joint Advisory Committee on Justices of the Peace (Scottish Government) (2000-2004)
- Temporary Sheriff (1992-1997)

Publications

- Joint Editor, Free & Open Source Software Law Review
- Free & Open Source Software (Shemtov & Walden) – "Public Sector & Open Source" (Oxford University Press, 2013)
- Electronic Evidence (Mason), Scottish Chapter (Butterworths, April 2007; 2nd Edition, Butterworths 2010; 3rd edition, 2012)
- The International FOSS Law Book – Joint author UK Chapter (Open Source Press, 2011)
- Formerly Joint Editor, E-law Review (W. Green & Sons)
- Formerly Executive Editor, Scottish Parliament Law Review (W. Green & Sons)

Qualifications

- Accredited Mediator, Mediation Forum (Ireland) (2006)
- Accredited Mediator, The Mediation Bureau (Scotland) (1997)
- Diploma in Trial Advocacy, National Institute for Trial Advocacy (USA) (1995)
- LLB (Hons), Edinburgh University (1973)

Memberships

- Chairman, Scottish Society for Computers & Law
- Chairman, Faculty of Advocates Information Technology Group
- Formerly Co-convenor Scottish Lawyers' European Group
- Member, IT Panel, Bar Council of England & Wales
- Member, European Legal Network
- Member, Scottish Council for International Arbitration
- Founder Member, QA Legal

Languages

- English
- French
- Italian