NEW SQUARE

Richard O'Brien

Education

B.A., MPhil (Oxon), C.P.E. (City)

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Year of Call: 2005

Profile

Richard practices in the fields of public law and human rights, commercial law and professional liability.

Public Law and Human Rights

Richard has a substantial public law and human rights practice, having been appointed to the Attorney-General's Panel of Approved Counsel (B-Panel) in 2013, and before that to the Attorney-General's Freedom of Information Panel in 2010 and to the C-Panel in 2009. He regularly acts for and against government departments as well as in judicial review claims against the Legal Ombudsman, Financial Ombudsman Service and Financial Services Compensation Scheme. Current cases include:

- *R (Howard League for Penal Reform) v The Lord Chancellor, CO/16747/2013 and CO/17190/2013:* Acting for the Lord Chancellor defending reforms to criminal legal aid. Led by James Eadie QC.
- *Belhaj v Straw and others, HQ12X02603*: Acting for the individual and Government Defendants in claims brought by the former leader of the Libyan Islamic Fighting Group alleging complicity in extraordinary rendition. Led by Rory Phillips QC.
- *Kamoka v Security Service and others, HQ13X00363:* Acting for Government departments sued by several Libyans for allegedly unlawful detention, asset freezing and complicity in detention and torture. Led by Rory Phillips QC.
- *Geloo v Attorney-General (on behalf of Security Service and Secret Intelligence Service), HQ12X04641:* Acting for Government departments sued by a British citizen for alleged complicity in detention and mistreatment in Saudi Arabia. Led by Lisa Giovanetti QC.
- *R (Ralli Solicitors) v Legal Ombudsman:* Acting for claimant firm challenging a substantial reduction in its fees by the Legal Ombudsman after the successful conduct of its client's employment claim.
- *R (Sud) v Legal Ombudsman, CO/2762/2012:* Successful judicial review of a determination of the Legal Ombudsman.
- *R (Warren) v Financial Services Compensation Scheme:* Acting for claimant in challenge to FSCS award in respect of a claim against insolvent insurance brokers. Led by Ben Hubble QC.
- *R (Kuteh) v Secretary of State for Education, C3/2013/3571:* Appeal before Court of Appeal against listing of mental health nurse on the Adults' and Children's Barred Lists. Concerns mislaid eyewitness evidence disputing version of events which led to listing.

Recent reported cases include:

- *R (BB) v Special Immigration Appeals Commission [2012] EWCA Civ 1499; [2013] 1 WLR 1568:* Applicability of Article 6 of the ECHR (right to a fair trial) to bail proceedings before SIAC. Led by Robin Tam QC.
- *R (Western Governors Graduate School) v Secretary of State for the Home Department [2013] EWCA Civ 177; [2013] All ER (D) 80 (Mar):* Lawfulness of "bright line" criterion for determination of Tier 4 Sponsor College licence application.
- *R (Kuteh) v Upper Tribunal (Administrative Appeals Chamber): [2012] All ER (D) 58 (Jun); EWHC 2196 (Admin).* First successful application of Cart criteria for review of unappealable decisions of the Upper Tribunal. Cited in Fordham's Top 50 Public Law cases of 2012.
- *R (Central London College) v Secretary of State for the Home Department [2012] EWHC 1273 (Admin):* Successful defence of Home Secretary's decision to revoke the Tier 4 sponsor licence of an educational college.

Richard has a particular interest and expertise in the developing area of claims by companies against public authorities for infringement of Article One of the First Protocol ("A1P1") of the European Convention on Human Rights (the right to possessions) and any other cases where public and commercial law intersect.

Richard has Developed Vetted security clearance.

He is also committed to pro bono work, acting for both individuals and organisations. In 2013 he was nominated for

the Bar Pro Bono Award in 2013. In 2012 he successfully acted for an athlete seeking British nationality in order to compete for the UK in London Olympics.

Commercial and Professional Liability

Richard also has a busy practice in Chambers' core areas of commercial litigation and professional liability. In the commercial sphere, he has particular experience of insurance and banking, including recently advising on a claim against a large investment bank in connection with its financing of a corporate acquisition and a separate claim against an investment bank for premature receivership of a borrower's properties. Other current cases include:

- *Barclays Private Trust Limited v (1) Ernst & Young LLP (2) Olswang LLP:* Accountants and solicitors negligence claim in the Commercial Court arising out of financial due diligence in respect of the acquisition of the Esporta health and leisure business. Led by Roger Stewart QC.
- *Warren v Tower Group:* Claim in the Commercial Court against promoter of MCashback Software 6 tax relief scheme and associated accountants negligence claim. Led by Ben Hubble QC.
- *Neal v Rowland Tildesley & Harris (a firm):* Claim against solicitors for alleged negligence in the sale of a public house.

In his professional negligence practice, he regularly acts for and against solicitors, surveyors, accountants, architects, auditors, barristers, construction professionals, financial services professionals and insurance brokers. He also has a particular interest in Ombudsman and compensation schemes (Legal Ombudsman, Financial Ombudsman Services, Financial Services Compensation Scheme) which adjudicate on professional services.

Education, Scholarships and Appointments

Richard gained the highest first in his subject at Oxford, as well as Magdalen College scholarships and tutorial prizes. He went on to receive an MPhil. He came first in his year at Bar School in Advocacy and won several scholarships, including the Lord Mansfield, Hardwicke, CPE and pupillage scholarships. He was the Judicial Assistant to the Master of the Rolls in January-March 2008.

Publications and Professional Memberships

Richard is an editor of Jackson & Powell on Professional Liability and has also contributed articles to Judicial Review (Hart Publishing). He frequently lectures on topics relating to his practice. Ricahrd is a member of the Professional Negligence Bar Association, COMBAR and the Administrative Law Bar Association.

Click here to read Richard's recent talk on The Legal Ombudsman scheme.

Click here to read Richard's recent article on the R (Layard Horsfall Ltd) v Legal Ombudsman case

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International Arbitration

Richard accepts instructions in arbitration proceedings and is currently instructed in an arbitration concerning the alleged breach of warranties in an agreement relating to the sale and purchase of an accountancy practice. He has also recently assisted in a substantial international arbitration concerning alleged delay in the construction of an oil refinery.

Commercial Dispute Resolution

Richard has a particular interest in commercial litigation and regularly acts for parties in commercial disputes. Particular cases include:

- Advising on a potential claim against a large investment bank arising out of alleged premature appointment of receivers following the financing of a £500m corporate acquisition.
- Acting for a company in judicial review proceedings challenging the Home Office's refusal to grant it a Tier 4 Sponsor Licence. Includes a damages claim for infringement of the company's right to possessions, contrary to Article One of the First Protocol of the European Convention on Human Rights.
- A month-long appeal against HMRC's refusal of an input tax claim arising from alleged "carousel" or "contra-trading" fraud.
- A dispute relating to the exercise of pre-emption rights by a company's shareholders to force the sale of another shareholder's shares.
- A claim concerning the alleged breach of warranties in an agreement relating to the sale and purchase of an accountancy practice.

- A claim against HMRC by a defaulting taxpayer concerning alleged losses caused by distraint of equipment.
- A dispute over the interpretation of a clause purporting to provide “search engine optimization” services.
- Numerous claims in the Companies Court in directors’ disqualification proceedings.
- A challenge to jurisdiction in a claim brought against a German client.
- Sale of goods.

Richard has also advised on shipping matters (specifically on rights of salvage) and on insurance (on avoidance for material non-disclosure and on restitutionary remedies against a third-party beneficiary of an avoided insurance policy). He has contributed to *Insurance Law for the Construction Industry* (Oxford University Press, March 2008). During his time as a Judicial Assistant to the Master of the Rolls, Richard gained further experience in the fields of shipping and insurance law.

Professional Liability

Richard has a substantial advocacy, advisory and drafting practice in the professional liability field. Professions of which Richard has particular experience are solicitors, barristers, surveyors and valuers, financial advisers, accountants, auditors, insurance brokers and underwriters. He has also advised on exceptions to the immunity of expert witnesses. He has been instructed (on behalf of both claimants and defendants) in numerous lenders’ claims against solicitors and surveyors.

Particular cases in which Richard has been instructed include: a high value claim against an auditor for failing to discover a fraud perpetrated on a company by its company secretary; a claim by the Financial Services Compensation Scheme against a large investment company, concerning the provision of high-risk investments (or 'precipice bonds') to private investors; a claim in deceit and breach of fiduciary duty against a solicitor for allegedly conspiring with a client’s business partner in the misappropriation of the client’s assets.

Richard was also a contributor to the latest edition of *Jackson & Powell on Professional Liability*.

Public Law and Human Rights

Richard is particularly interested in public and governmental work. He is a member of the Attorney-General's Panel of Approved Counsel (B-Panel, 2013), having previously been on C-Panel since 2009. He is currently representing a number of UK Government departments against allegations of complicity in unlawful rendition and detention in Libya and Saudi Arabia, and previously acted as a junior in the Guantanamo Bay damages claims. He has Developed Vetted security clearance.

Other recent public law cases of note include:

<u>For Government</u>

- *R (BB) v SIAC* [2012] EWCA Civ 1499; [2013] 1 WLR 1568: Applicability of Article 6 of the ECHR (right to a fair trial) to bail proceedings before the Special Immigration Appeals Commission.
- *R (WGGS) v SSHD* [2013] EWCA Civ 177; [2013] All ER (D) 80 (Mar): Lawfulness of “bright line” refusal rate criterion for determination of Tier 4 Sponsor College licence application.

<u>For Claimants</u>

- *R (Zaskin) v SSHD*, CO/9501/2012. Ongoing claim against the Home Office for, inter alia, unlawful refusal to grant a Tier 4 Sponsor College a Highly Trusted Sponsor licence. Includes a claim for infringement of the claimant’s right to possessions, contrary to Article One of the First Protocol of the European Convention on Human Rights.
- *R (Kuteh) v Upper Tribunal (Administrative Appeals Chamber)* [2012] All ER (D) 58 (Jun); EWHC 2196 (Admin); First successful application of *Cart* criteria. Cited in Fordham’s Top 50 Public Law cases of 2012.
- *R (Sud) v Legal Ombudsman,* CO/2762/2012. Successful judicial review of a determination of the Legal Ombudsman regarding a complaint about legal services provided in an employment dispute.
- Overturning Home Office’s refusal of British nationality to a Ukrainian wrestler wishing to compete in the London 2012 Olympics.

Richard regularly appears in the High Court in judicial review cases of all kinds and before the First Tier (Information) Tribunal in connection with appeals under the Freedom of Information Act (Richard is a member of the Attorney-General’s Freedom of Information Panel). He has also acted in his own right for local authorities and other public bodies, including statutory port authorities, the Crown Estate Commissioners and the Food Standards Agency.

Richard also writes articles and gives seminars on public law:

- *Judicial Review*, March 2013 (Volume 18, Number 1): The Limits of Judicial Deference to Decisions of Regulatory

Bodies: *R (Emptage v Financial Services Compensation Scheme).*

- Click here to read Richard's recent talk on The Legal Ombudsman scheme.
- Click here to read Richard's recent article on the R (Layard Horsfall Ltd) v Legal Ombudsman case

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