

Richard O'Brien

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Richard O'Brien practices in the fields of commercial law, professional liability and public law.

Commercial & Professional Liability

Richard has a busy practice in Chambers' core areas of commercial litigation and professional liability. In the commercial sphere he has particular experience of banking, including 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.

Commercial cases include:

- a negligent investment advice claim against well-known private bank
- claim by customer of bank to recover property sale proceeds applied to reduce unrelated debts under a cross-guarantee
- breach of trust/knowing receipt claim in relation to unlawful disposal of shares in a property-owning offshore company
- claim against property developer under oral loan agreement and guarantee
- claim against top 4 accountancy firm in relation to a £500m corporate acquisition

In Richard's professional negligence practice, he regularly acts for and against solicitors, surveyors, accountants, architects, auditors, barristers, construction professionals, financial practitioners and insurance brokers. He also has a particular interest in Ombudsman and compensation schemes (Legal Ombudsman, Financial Ombudsman Service, Financial Services Compensation Scheme) which adjudicate on professional services. He is the editor of the chapter "Human Rights and Judicial Review in Professional Liability" in Jackson & Powell on Professional Liability.

Professional liability cases include:

- defending a barrister in a negligence claim arising from Proceeds of Crime Act (POCA) confiscation proceedings following the client's conviction for trademark offences; Richard has particular expertise in POCA. He has previously represented criminal solicitors sued by a convicted fraudster for failing to advise on the extent of assets falling within the scope of POCA.
- solicitors negligence claim in relation to alleged misadministration of an estate; includes application for civil restraint order

- conveyancing negligence claim concerning bridging loan to trustees of a church
- judicial review claim against Financial Services Compensation Scheme concerning refusal of claim on ground that advice given by an unregulated non-UK sister company of a regulated firm
- claim against Financial Ombudsman Service ("FOS") on jurisdictional point concerning whether a complainant bringing FOS claim in incorrect capacity is an "eligible complainant"
- claim against FOS concerning whether FOS must consider a "break in the chain of causation defence"

Public Law & Human Rights

Richard has a successful public law and human rights practice, and is recognised as a Leading Junior in Administrative & Public Law in Chambers & Partners. He was appointed to the Attorney-General's A-Panel of Approved Counsel in 2017 (and before that to B-Panel in 2013 and C-Panel in 2009, as well as to the Freedom of Information Panel in 2010). He regularly acts for and against government departments and local authorities, as well as in judicial review claims against the Legal Ombudsman, Financial Ombudsman Service and Financial Services Compensation Scheme. He is praised for his "crisp and impressive drafting style" and "incisive tactical view" (Legal 500, 2015). He has particular experience in immigration, including business immigration, and also in national security matters.

Cases include:

- *R (Paramjit Kaur) v Secretary of State for the Home Department*, C4/2015/0549: Appeal to Court of Appeal against decision quashing Secretary of State's refusal to grant Indian national leave to remain in the UK. The issues include the meaning of "insurmountable obstacles" to continuing family and private life in the country of origin (under EX/1(b) of Appendix FM of the Immigration Rules) and of the meaning of the test of "no ties" to the country of origin (under Rule 276ADE(vi) of the Immigration Rules).
- *HF (Afghanistan) v Secretary of State for the Home Department*, C5/2014/3569: Appeal to the Court of Appeal by an Afghan asylum-seeker against conclusion that it was reasonable to relocate to Kabul.
- *Masood Khan v Secretary of State for the Home Department*, C/2014/4275: Another appeal to the Court of Appeal by an Afghan asylum-seeker, on ground that the Upper Tribunal was wrong to hold he was not at risk of retaliation by the Taliban.
- *AR, IG and JM v Secretary of State for the Home Department*, SN/17, 20 and 21/2015: Immigration appeal against refusal of naturalisation. Being heard in the Special Immigration Appeals Commission.
- Bulk Personal Data - challenge by Privacy International to the lawfulness under Article 8 ECHR of the acquisition and use of personal datasets and communication data in bulk for intelligence purposes. Judgment on domestic and ECHR lawfulness given on 17 October 2016: [2016] UKIPTrib 15_110-CH. EU law and issues of proportionality to be determined at hearing in 2017.
- *Privacy International and others v FCO*: Challenge to the lawfulness of alleged malicious software ("malware") programmes brought following media reporting deriving from Edward Snowden (acting for Respondents).
- *R (Bank Mellat) v FCO*, CO/1733/2014: Challenge to UK Government support for EU sanctions against an Iranian bank suspected of facilitating the Iranian nuclear weapon programme. Acting for FCO.
- *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.

- Several cases defending challenges to legal aid reforms, including: *R (Ben Hoare Bell) v The Lord Chancellor*, CO/2770/2014: Decision to remunerate legally aided solicitors acting in judicial reviews only where permission is granted; *R (Howard League for Penal Reform) v The Lord Chancellor*, CO/16747/2013 and CO/17190/2013: reforms to prison law legal aid, currently on appeal to the Court of Appeal; *R (Ryder) v Lord Chancellor*, CO/851/2014: reforms to prison law legal aid (Article 5/14 challenge).
- *R (Ralli Solicitors) v Legal Ombudsman*, CO/17464/2013: 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: Acting for claimant in successful judicial review of a determination of the Legal Ombudsman.
- *R (Warren) v Financial Services Compensation Scheme*, CO/15270/2013: Acting for claimant in challenge to FSCS award in respect of a claim against insolvent insurance brokers.
- *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. Acting for the claimant nurse.
- *Nottingham City Council v Persons Unknown*, A01NG200, proceedings for an injunction against unidentified illegal street traders.

Reported cases include:

- *R (LCCSA and CLSA) v The Lord Chancellor* [2014] EWHC 3020 (Admin): A challenge to the consultation process leading to the decision to open the criminal legal aid solicitors market to competitive tendering. Acting for the Lord Chancellor.
- *R (Howard League for Penal Reform) v The Lord Chancellor* [2014] EWHC 709 (Admin): Acting for Lord Chancellor successfully resisting challenge to prison law legal aid reforms. Currently on appeal to the Court of Appeal.
- *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 areas of: judicial reviews of the decisions of ombudsmen (particularly the FOS, FSCS and LeO); and claims 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.

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 2012 he successfully acted for an athlete seeking British nationality in order to compete for the UK in London Olympics.

Privacy Policy

Click here for a [Privacy Policy](#) for Richard O'Brien.

Areas of Expertise

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's professional negligence practice encompasses Chambers' main core areas, particularly solicitors, accountants, auditors, barristers, surveyors, financial advisers, and insurance brokers. However, he has particular experience of and interest in accountants' and auditors' cases. In 2015 he has been involved in the following high-value accountants' negligence cases:

- *Barclays Private Trust Limited v Ernst & Young LLP*: Acting (with Roger Stewart QC) for claimants in a negligence claim against due diligence accountants arising out of the £474m acquisition of the Esporta health and leisure business in 2007. Concerned the scope of accountants' duties in a due diligence assignment. Concluded with a 12-day trial in the Commercial Court before Phillips J. Judgment awaited.
- *Frank Warren v Tower Group*: Claim in the Commercial Court against the promoter of MCashback Software 6 tax relief scheme and associated accountants negligence claim. Led by Ben Hubble QC.

Other accountants/auditors cases in which Richard has recently been or is involved include: a claim against accountants for negligent payment of client funds to a fraudster; a high value claim against an auditor for failing to discover a fraud perpetrated on a company by its company secretary.

Richard also frequently acts for HMRC, including in cases involving tax relief schemes, so is at home with the underlying subject matter of accountants' negligence claims relating to such schemes.



Richard also has a particular interest in Ombudsman and compensation schemes (Legal Ombudsman, Financial Ombudsman Services, Financial Services Compensation Scheme) which adjudicate on professional services.

Other cases in which Richard has been instructed include: 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; acting for lenders and borrowers in lenders’ claims.

Richard is also the editor of the forthcoming Human Rights and Judicial Review chapter of *Jackson & Powell on Professional Liability*.

Public Law and Human Rights

“Superb on paper and a powerful advocate.” “He’s very analytically strong and has built up a really impressive case profile on government issues with a cross-border dimension.” – Chambers & Partners, 2020

“A very strong junior with a crisp and impressive writing style.” – Legal 500, 2020

Richard has a successful public law and human rights practice, and is recognised as a Leading Junior in Administrative & Public Law in Chambers & Partners. He was 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 and local authorities, as well as in judicial review claims against the Legal Ombudsman, Financial Ombudsman Service and Financial Services Compensation Scheme. He is praised for his “crisp and impressive drafting style” and “incisive tactical view” (Legal 500, 2015). He has particular experience in immigration, including business immigration, and also in national security matters.

Other recent public law cases of note include:

For Government

- *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.

For Claimants

- *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*, June 2014 (Volume 19, Number 2): The Legal Ombudsman and Recent Case Law: A Less Deferential Approach?
- *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

Public International Law

4 New Square Chambers is a fast growing presence at the public international law Bar. Members of Chambers regularly act on behalf of, and against, national governments in the UK and abroad in contentious and advisory proceedings, and advise governments, corporate bodies, non-governmental organizations, and individuals on a range of matters including:

- the protection of foreign investment under bilateral investment treaties as well as regional protections such as NAFTA and the Energy Charter
- the interpretation and application of international law in domestic courts and international courts and tribunals
- state and diplomatic immunity
- international environmental law the use of force and armed conflict
- the international protections for human rights through international treaties such as the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

Current and recent instructions in the field of public international law include disputes before the International Court of Justice, the ICSID and ICC tribunals, the European Court of Human Rights, the Court of Justice of the Economic Community of West African States, and the domestic courts of the United Kingdom, the Gambia and the Republic of Turkey. Given Chambers' long-standing strength in international arbitration work, members of chambers are particularly well placed to advise and to represent parties in investor-State disputes.

Highlights of recent public international work by Members of Chambers include:

- appearing as counsel for the Republic of Costa Rica before the International Court of Justice in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*
- acting for the investors in a substantial investment arbitration against the Maldives Government
- acting on behalf of the UK government in the challenge by an Iranian Bank to the validity of sanctions imposed in line with international treaty obligations
- acting for and advising an investor in ICSID proceedings against a Central Asian state
- appearing as counsel for the Republic of Costa Rica before the International Court of Justice in the case concerning *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*
- acting for a leading European Bank in a \$75 million property rights claim pending before the European Court of Human Rights
- acting on behalf of leading NGOs against the Gambia under the human rights provisions of the Economic Community of West African States treaty
- appearing as counsel for a European state in the CME/Lauder bilateral investment treaty claims
- acting on behalf of leading NGOs in the challenge, on the grounds of compliance with customary international law and international treaty law, to the detention of David Miranda when carrying material from the Edward Snowden leaks
- advising the Republic of Serbia in the advisory proceedings before the International Court of Justice concerning *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*.

Qualifications & Memberships

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. Richard is a member of the Professional Negligence Bar Association, COMBAR and the Administrative Law Bar Association

Publications

The Legal Ombudsman Scheme: how it works and how firms can challenge its decisions, PNLA Beyond the Precipice Seminar

21 March 2013

The LeO has extensive powers and the freedom to depart from the law. With the limit on its jurisdiction having recently risen from £30,000 to £50,000 and the prospect of further rises, professional indemnity lawyers and insurers need to understand how the LeO works and how they can challenge its decisions in the Administrative Court by way of judicial review. Can Yeginsu and Richard O'Brien explain how.

Layard Horsfall Article: First judgment in a judicial review of the Legal Ombudsman

3 January 2014

On 20 December 2013 judgment was handed down in the first judicial review of a decision of the Legal Ombudsman ("LeO") to reach a substantive hearing. The judgment will be of interest to lawyers and complainants wishing to challenge unappealable decisions of LeO. It is particularly (though not only) relevant to LeO decisions which direct a reduction in fees. This is an area which, in view of the absence of a limit on the amount by which LeO can reduce fees, has caused particular controversy.