

## Brian Napier M.A., LL.B., Ph.D, Q.C

### Personal information

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### Clerking information

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Brian Napier QC is recognised as the leading practitioner in employment law at the Scottish bar. He is regularly instructed in complex and high-value cases, both in Scotland and England. He is a member of the Hastie Stable, Faculty of Advocates, Edinburgh. He is also qualified in English law and is a member of Cloisters Chambers in London.

### Leading cases

At the highest appellate level he was recently successful in the Supreme Court in a case raising fundamental issues going to the scope of the right of conscientious objection under the Abortion Act 1967 (*Doogan and Wood v Greater Glasgow Health Board* [2014] UKSC 68. and in 2012 he successfully defended before the Supreme Court the decision of the Court of Session in a case involving both sex and race discrimination (*Hewage v Grampian Health Board* [2012] IRLR 870, SC).

In 2015 and 2016 he appeared as counsel in two hearings before the Supreme Court (*UCU v University of Stirling* [2015] ICR 567 and *McBride v Scottish Police Authority* [2016] ICR 788)

Prior to the establishment of the Supreme Court, he appeared in the House of Lords, in both Scottish and English appeals, on four occasions.

He has appeared in several cases before the Court of Appeal and Employment Appeal Tribunal in England. In Scotland he regularly appears in the Court of Session, the Employment Appeal Tribunal (where he has appeared in over thirty appeals), and also at employment tribunals.

In 2014 he was instructed for all respondents in a series of lead cases decided by the EAT involving challenges to holiday pay calculations. (*Bear Scotland Ltd & Ors v Fulton & Ors* [2015] ICR 221) and he is actively involved in the ongoing litigation that is associated with this area of law in the light of that decision. He recently was successful in a decision of the EAT that confirmed the temporal limitation of back-pay claims in respect of holiday pay: *Fulton & Baxter v Bear Scotland Ltd* [2016]

UKEAT 0010\_16\_0912 (09 December 2016).

In 2013 he successfully appealed to the Court of Session a decision of the EAT which had radically restricted the law of unfair constructive dismissal as this operated in Scotland: *McNeill v Aberdeen City Council* [2014] IRLR 113, IH. In 2010 and 2011 he acted for employees before the employment tribunal and EAT in an equal pay claim (*Bury MBC v Hamilton* [2011] IRLR 358) that set limits on the availability of the “material factor” defence available to employers under the Equal Pay Act. He was also counsel instructed by Unison in the successful appeal by the Union to the Court of Session in *Wilkinson v City of Edinburgh Council* ([2012] IRLR 202).

In April 2017 he appeared as leading counsel in two appeals to the Inner House over the implementation of Glasgow City Council’s job evaluation scheme.

## **Other activities**

For many years Brian has been a member of the ACAS panel of arbitrators, and has conducted arbitrations in both England and Scotland.

In 2012 Brian was a member of the Working Group under Mr Justice Underhill which made recommendations for reform of employment tribunal rules and which led to their radical revision in 2013.

In 2010 he conducted, at the invitation of the States of Jersey, an inquiry into the dismissal of a senior police officer, subsequent to the well-publicised investigation into child abuse on the island.

He has for many years been an editor of *Harvey on Industrial Relations and Employment Law* (Butterworths), and *Transfer of Undertakings* (Sweet & Maxwell) and contributes to *Blackstone’s Employment Law Practice*. He gives lectures and seminars on a wide range of topics in employment and discrimination law.

## **Other information**

Before practising full-time at the Scottish and English Bars, Brian was an academic lawyer, teaching first at the University of Cambridge and subsequently at the University of London where he was a Professor of Law. He has also spent a year teaching law in France (Universities of Paris 1 and 2) and has experience of teaching at the University of Bordeaux. He has acted as an expert for the International Labour Office, and in that connection has visited Tanzania, Uganda and Bangladesh, and written reports on aspects of labour law in these countries.

## THEMIS ADOVCATES

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