



Admitted 1986

Appointed to Silk 2002

Telephone 0131 260 2881

Email bwnapier@fastmail.com

Areas of Practice

Employment & Discrimination and Public Law & Equality

Profile

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 where he regularly appears in the Court of Session, the Employment Appeal Tribunal, and also at employment tribunals. At appellate level he has recently appeared in the Supreme Court and has also appeared in several cases before the Court of Appeal and Employment Appeal Tribunal in England. Brian operates a wide employment law practice, with a particular strength in discrimination matters and has been listed in Chambers & Partners UK as a Star Individual yearly since 2015.

Representative Cases

At the highest appellate level he was 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 has been involved in the consequential litigation associated with that decision. He 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] UKEA0010_16_0912 (09 December 2016).

Representative Cases (continued)

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.