

Andrew Macnab

MA, LL.M (Cantab)

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Summary

Andrew practices in the fields of EU/competition law, VAT, duties and indirect taxation, utilities regulation and general civil/commercial litigation. Andrew was appointed Junior Counsel to the Crown (A Panel) in March 2010.

Notable/recent Cases

- Factortame
- NMTV v Jobserve
- JJ Burgess v OFT
- *In re* Beresford and Smith
- *In re* Mineral Resources
- Greymalkin v Copleys
- Milk Marketing Board litigation
- Messenger Leisure Developments Ltd v CCE
- HMRC v RSPCA and ToTel
- Total UK v HMRC
- R (oao Greystone Export Trading and Evolution Export Trading) v HMRC
- Littlewoods Retail v HMRC
- Compound interest litigation for HMRC
- Homeserve Membership Ltd v HMRC
- Water Act 2003

Qualifications

- Downing College, Cambridge (1981 - 1985)
- BA (law) (1984) MA (1988)
- LL.M (international law) (1985)
- Scholar of Downing College
- Arnold McNair Scholar in International Law (1984)
- Whewell Scholar in International Law (1985)
- Clive Parry Prize for International Law (1985)

Specialist Areas

Commercial - Professional Negligence

Between 1990 and 2004 Andrew acted for solicitors accused of professional negligence, receiving instructions from the Solicitors Indemnity Fund via its panel solicitors in more than 250 matters. He has also, on occasions, acted for claimants. He has been listed in the Legal 500 as a leading professional negligence junior.

Reported and decided cases:

- Greymalkin Ltd v Copleys (a firm) [2004] EWHC 1155 (Ch) [2004] PNLR 44, [2004] EWCA 1754 (CA). (failure to advise of existence and effect of floating charges)
- Madden v Hunt Dickens (a firm) (2000), QBD, Birmingham Mercantile List (assessment of damages flowing from incorrect method of serving proceedings on foreign defendant)

- Carlson & Co (a firm) v Noterise Ltd and Fox (1999) QBD (alleged negligence in conduct of professional negligence, etc, litigation against solicitors, patent agents)
- Wickens v. Parkinson Wright (1998) QBD (failure to draft lease in accordance with client's instructions)
- Siasati v. Bottoms & Webb (a firm), New Law Digest, 14/2/97, QBD (failure to advise on terms of charge)
- Tejendrasingh v. Christie & Others [1995] EMLR 152, QBD; [1997] EMLR 597, CA (permitted use of documents obtained in the course of discovery, RSC Order 24 rule 14A)
- Green and Greenacre v. Cunningham John (a firm), (1995) 46 Con LR 62, CA (unauthorised settlement of building litigation)
- La Roux v. Pictons (a firm) [1994] EGCS 168, QBD (failure to advise properly in relation to planning permission and user covenant)

He is a member of the Professional Negligence Bar Association.

Other commercial/EC

From 1996 until its dissolution, Andrew acted on a regular basis for the Residuary Milk Marketing Board in arbitrations and litigation against whole milk and low fat milk producers. Claims involved elements of EC law (in both commercial law and public law contexts), domestic contract law, competition law and statutory interpretation.

Competition Law

Andrew is recommended as a leading junior in EU/Competition Law by Legal 500.

He acted for:

- The Solicitors Regulation Authority in relation to EU and competition law challenges to certain Solicitors Practice Rules, in disciplinary proceedings arising out of miners' compensation claims
- an undertaking subject to investigation by the OFT in Case CE/4327-04: Bid-rigging in the construction industry
- an individual in Case CE/3094-03: Dairy Retail Price Initiatives Investigation
- the Consumers' Association in Burgess v Office of Fair Trading [2005] CAT 25 (a challenge to an OFT decision that crematorium was not abusing dominant position). This was the first case in which the Consumers' Association intervened in an appeal to the Competition Appeal Tribunal
- a supplier of advertising monitoring and information services in a claim against a trade association concerning access to outdoor advertising expenditure data
- Sports World, a proposed intervener, in JJB Sports plc (and others) v Office of Fair Trading (Competition Appeal Tribunal, 2003)
- Network Multimedia Television Ltd in Network Multimedia Television Ltd v Jobserve Ltd, The Times, 25 January 2001, ChD; [2001] UKCLR 814 (ChD); [2002] UKCLR 184, CA, the first case in which a UK court granted an interim injunction to restrain a contravention of the Chapter II prohibition under the Competition Act 1998
- the Milk Marketing Board in a dispute with Lancashire Dairies Ltd over alleged illegal differential pricing of milk (CAP, article 82 EC)
- the Director General of Fair Trading (between 1991-1993) in Re the Supply of Ready Mixed Concrete (No.5) (contempt of court by ready mixed concrete suppliers; Restrictive Trade Practices Act 1976)

Andrew advises private clients regularly in relation to domestic and EC competition law issues, including Chapter I/Article 81 and Chapter II/Article 82, leniency applications, cartel investigations, telecommunications, mergers and State aid.

Since 2005, he has been advised the Water Services Regulation Authority (OFWAT) in relation to all aspects of the water supply licensing regime introduced by the Water Act 2003 (see also "utilities regulation", below), including advice on the interaction of the WSL regime with UK and EC competition law.

He is a member of the Competition Law Association.

European Law

Much of Andrew's current and recent practice has involved EC law issues, in one form or another. Andrew has appeared in a variety of cases raising "pure" or specialist issues of EC law. Reported cases include:

- R (on the application of Lokal Ltd and others) v Rural Payments Agency [2005] EWHC 798 (Admin) (challenge by meat processors of refusal to award import rights in respect of Brazilian frozen beef)
- H and R Ecroyd Holdings Ltd v Commission of the European Communities, (UK intervening), Case T-220/97, [1999] ECR II-1677 (failure by the Commission to give effect to the judgment in Ecroyd 1)
- R v. Minister of Agriculture, Fisheries and Food ex parte H and R Ecroyd Holdings Ltd and John Rupert Ecroyd, Case C-127/94, [1996] ECR I-2731 (challenge to refusal to award SLOM milk quota; compatibility of quota regulations with general principles of EC law)

Fitzgerald v. Williams [1996] QB 657 (CA) (Security for costs against EU nationals resident in the EU; article 6 EC; RSC O.23 - as amicus curiae)

- Howard v. Ministry of Defence [1995] ICR 1074 (challenge to MOD widowers pension rules under Article 119 EEC)
- Bundesanstalt für den Güterfernverkehr v. Gebr. Reiff GmbH & Co KG Case C-185/91, [1993] ECR I-5801 (compatibility with EC competition rules of German legislation regulating long-distance road haulage rates Article 85 EEC)
- The State (Portugal) v. Morais Case C-60/91 [1992] CMLR 533 (ECJ) (freedom of establishment, freedom to provide services and competition in relation to a Portuguese driving instructor (Articles 52, 59, 85 EEC))
- R. v. Secretary of State for Transport, ex parte Factortame (No.3) Case C-221/89 [1992] QB 680 (ECJ) (freedom of establishment (Article 52 EEC); compatibility with EC law of the Merchant Shipping Act 1988)
- R. v. Secretary of State for Transport, ex parte Factortame (No.2) [1991] 1 AC 603 (HL) (availability of interim relief against the Crown)

Andrew achieved a certain notoriety as a result of judicial praise of a note he prepared in the course of the Factortame litigation: see Factortame No 5 [1997] EuLR page 498, per Hobhouse LJ; [2000] 1 AC 524 at 545, per Lord Slynn.

He is a member of the Bar European Group.

Public & Administrative Law

Andrew has acted for the Commissioners of Revenue and Customs in relation to a number of (proposed and actual) claims for judicial review brought by taxpayers. He recently acted (successfully) for meat importers in a challenge to refusals by the Rural Payments Agency to grant them import rights to which they were entitled (see EC law).

He is a member of the Administrative Law Bar Association

Utilities Regulation

Since 2005, Andrew has been retained by the Water Services Regulation Authority (OFWAT) on a regular basis. Working closely with OFWAT and DEFRA, he advised in relation to the implementation of the Water Supply Licensing (WSL) regime introduced by the Water Act 2003. This has included advising on the drafting of revised conditions of appointment, standard conditions of water supply licences, statutory instruments and various statutory and non-statutory guidance issued by OFWAT. He has continued to advise in relation to the operation and review of the WSL regime (and generally in relation to competition in the water and sewerage industries). He has also advised OFWAT in relation to the investigations into breaches of conditions of appointment and failure to meet service standards by Southern Water Services Ltd, Severn Trent Water Ltd and Thames Water Utilities Ltd and the imposition of financial penalties on those companies under the Water Industry Act 1991. He has also advised on the Water Resale Order 2006 and acted for OFWAT in connection with litigation between Welsh Water and Corus UK.

VAT, Customs & Excise Duties and Indirect Taxation

Since 1996 Andrew has acted regularly in VAT, customs duties, excise duties cases and indirect taxation cases before the VAT & Duties Tribunal and High Court and in the Court of Appeal. He was (from its creation until its abolition) a member of the Customs & Excise supplementary panel of counsel. Since then he has been nominated by the Attorney-General on a regular basis to appear for the Crown in VAT and duties matters. In March 2010, Andrew was appointed Junior Counsel to the Crown (A Panel).

He has also advised a number of private clients on VAT matters, most of which have been resolved without recourse to the tribunal.

Recent cases include:

- Homeserve GB Ltd v HMRC [2008] IPT0014, [2009] EWHC 1311 (Ch) (insurance premium tax - whether payments to an intermediary were paid pursuant to a "separate contract" from a contract of insurance)
- Littlewoods Retail Ltd and others v RCC [2008] EWHC 2622 QB, [2009] STC 22, QBD (whether compound interest recoverable by taxpayer - application to stay claims)
- Ocean Grown UK Ltd [2008] UKVAT V20562 (whether wheatgrass juice a "beverage")
- Royal Bank of Canada Trust Corporation Ltd v HMRC [2008] UKVAT V20520 (attribution of input tax - whether direct and immediate link of inputs to taxable supplies)
- R (Just Fabulous (UK) Ltd and others) v RCC; [2008] STC 2123, QBD (judicial review - MTIC fraud, contra-trading, disproportionate investigation)
- Total UK Ltd v RCC [2007] STC 564, ChD; [2008] STC 19 CA (VAT treatment of customer loyalty scheme)
- RCC v RSPCA; RCC v ToTel Ltd [2008] STC 885, ChD (VAT tribunal's power to award interest - whether power to award compound interest)
- EMI Group plc v HMRC [2006] UKVAT 19417; [2006] UKVAT 20142; [2007] UKVAT 20211; (treatment of promotional copies of CDs and records; Marks & Spencer capping issue)
- Kerry Logistics (UK) Limited, Herbert Watson Freight Services Limited v HMRC [2006] UKVAT(Excise) (liability of REDS for excise duty)
- HMRC v Jeancharm Ltd (t/a Beaver International) [2005] STC 918, ChD (identification of recipient of supply)
- Kieran Mullin Ltd v CCE [2003] STC 274, ChD (hairdressers' chair rental agreements)
- Peugeot Motor Company v HMCE (2003) VAT & Duties Tribunal (recovery of overpaid VAT, s.80(4A) VATA)
- Public and Commercial Services Union v CCE (2003) VAT & Duties Tribunal; [2004] STC 376 ChD (apportionment of union membership subscription)
- Tricell UK Ltd v CCE (2003) VAT & Duties Tribunal (whether interim relief available in the tribunal; whether hardship provisions applicable to repayment claims)
- Messenger Leisure Developments Ltd v CCE (2003) VAT & Duties Tribunal; [2004] STC 1563, ChD; [2005] STC 1078 (CA) (whether appellant non-profit making for purpose of sporting facilities exemption)
- TDG (UK) Ltd v CCE [2002] V&DR 323 (Challenge to refusal to license excise warehouse for storage of home-produced tobacco for the domestic market)
- CCE v Venubest Ltd [2002] EWHC 2870, [2003] STC 433 (VAT treatment of lease of car park)
- CCE v West Herts College [2001] STC 1245 (VAT treatment of college prospectuses)
- Universal Sealants Ltd v CCE, E00193, (2001) VAT & Duties Tribunal (Liability for hydrocarbon oils duty in respect of adapted lorries)

He is a member of the VAT Practitioner's Group (London Chapter) and the Revenue Bar Association.

Additional Information

Andrew has been instructed regularly in general commercial/contractual disputes.

- He acted for one of a number of defendants to a claim for conspiracy and unlawful interference in the Commercial Court
- He was instructed in a dispute taking place in the Isle of Man concerning the ownership of an Indian airline
- For a number of years he acted for a supplier of office equipment in long running disputes with former employees, involving issues of fraud and misrepresentation

- He acted on a regular basis for a leading independent supplier of motor fuels in relation to disputes arising out of exclusive supply agreements and associated loan agreements
- He advised and appeared for the Environment Agency in matters involving the consequences of corporate insolvency and dissolution and individual bankruptcy and death on the waste management licensing regime of the Environmental Protection Act 1990 (see *In re Mineral Resources Ltd* [1999] 1 All ER 746; *In re Wilmott Trading Ltd (in liquidation)* (Nos 1 and 2) [1999] 2 BCLC 541)

Publications

- Andrew is the editor of Bellamy & Child: Materials on European Community Law of Competition, Oxford University Press (2008 to date)-
- Andrew contributed the chapter on private enforcement of competition law claims to Willis, Introduction to EU Competition Law, Informa, 2005. He contributed a module on private enforcement of competition law claims to Informa's EU Competition Law self-study series (2005, 2006).
- Between 1999 and 2003 Andrew was a contributing editor to the Lloyd's Law Reports: Professional Negligence series
- He contributes articles to De Voil's Indirect Tax Intelligence and the Tax Journal.

What the directories say

Under EU and competition the **Legal 500, 2010** states that Andrew Macnab is 'excellent, very commercial and straight to the point'.

Tax: corporate and VAT declares that 'of the juniors, the very user friendly and clever Andrew Macnab is well regarded'. - **Legal 500, 2010**

Andrew Macnab is recommended as a leading junior in EU and Competition Law by **Legal 500, 2003, 2004, 2005, 2006, 2007, 2008 and 2009**.