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Overview

Toby is a specialist in public law, including planning and environmental law, immigration and asylum, social security, community care, and human rights. He has a diverse practice, acting for government departments; arms-length bodies; local government; NGOs; commercial organisations and individuals.

His practice is predominantly UK based, but he also acts in an advocacy role in international fora and advises UN bodies, foreign governments, and international human rights NGOs on international human rights law, including business and human rights.

Planning and Environmental Law

Toby advises a range of clients on planning and environmental law matters, including in particular on Environmental Impact Assessment and compliance with the Habitats Regulations. He advises local authorities on the development of their Local Plans and is advising a number of NGOs in relation to their advocacy and strategy to ensure environmental protection post-Brexit. He is the author of the chapters on renewable energy and climate change law in *Garner's Environmental Law*.

Recent judicial review work has involved acting for:

- Mid Sussex District Council in a judicial review of its decision to grant planning permission to itself, as landowner, for residential development: *R (Irving) v Mid Sussex District Council* [2017] EWHC 243 (Admin)
- Wiltshire Council in a judicial review of its decision to grant planning permission for tourism development in the countryside: *R (Austin) v Wiltshire Council* [2017] EWHC 38(Admin)
- The Secretary of State for Communities and Local Government in a s.288 challenge to an Inspector's decision to refuse planning permission for residential development on grounds of flooding (ongoing), and in a challenge to the Secretary of State's decision to make a compulsory purchase order (ongoing)
- The South Downs National Park in a judicial review of its decision to grant planning permission for tourism development in the National Park (ongoing)
- Trafford Council in a judicial review of its decision to replace all its existing street lighting with LED luminaires.

Recent inquiry work has included acting for:

- Friends of the Earth in a four week, nationally significant public inquiry into a proposal for a new opencast coal mine in Northumbria;
- A local authority in two appeals against refusal of planning permission for residential development of more than 500 homes in the countryside;
- The Homes and Communities Agency in an appeal against refusal of permission for 1300 homes.

Over a longer period, Toby has advised and acted for developers and individuals in a wide range of planning and environmental law matters. Significant reported cases in that longer period include *R (Ardley Against Incineration) v SSCLG* [2011] EWHC 2230 (Admin) and *R (Bristol City Council v SSCLG)* [2011] EWHC 4014 (Admin).

Public law

Toby acts for both claimants and defendants in a wide range of judicial review claims. He is on the government's panel of counsel and has acted for and/or advised the Department for Work and Pensions, the Department of Health, the Home Office, DCLG, BEIS, and HMRC, as well as a number of arms-length bodies, including the Homes and Communities Agency and the Environment Agency. He is the co-author of the chapter on judicial review procedure in *Judicial Review* edited by Supperstone, Goudie and Walker.

Immigration and asylum

Toby acts in unlawful detention / false imprisonment claims, asylum and trafficking claims, Dublin III cases, ETS fraud cases, and general Points Based System judicial reviews. He has a mixed Claimant and government practice.

Recent judicial review claims include:

- The leading case on immigration appeal rights: see *R (Robinson) v SSHD* [2017] EWCA Civ 316. In that case, the Court of Appeal affirmed the position as established in *R (Hussein) v First Tier Tribunal (para.353: present scope and effect) IJR* [2016] UKUT 00409 (IAC), in which Toby also appeared.
- The leading case on the application of section 31(2A) of the Senior Courts Act 1981 to claims challenging a decision to refuse leave to remain: see *R (Hossain) v SSHD* (currently unreported)
- Cases on failures to comply with Rules 34 & 35 of the Detention Centre Rules: see *R (Anugha) v SSHD* [2017] EWHC 1391 (Admin); and *Johnson v Home Office*; and multiple ongoing.

Toby also advises high net worth individuals and VIPs on immigration and asylum matters. He is currently acting for the exiled leader of a main opposition party of an African state in an appeal to the Court of Appeal in relation to his asylum and family reunification claims. He is also advising a number of high net worth individuals on securing their rights in advance of Brexit.

Social Security and EU Citizens' Rights

Toby is instructed by the SSWP in two appeals to be heard shortly in the Court of Appeal. The first, on appeal from *MH v Secretary of State for Work and Pensions (PIP)* [2016] UKUT 0531 (AAC), is a high-profile case dealing with the interpretation of the Personal Independence Payment ('PIP') Regulations and has been the subject of substantial media reporting. The second, on appeal from *Secretary of State for Work and Pensions v FF* [2015] UKUT 0488 (AAC), addresses a complex question of European law relating to the determination of which Member State is responsible for carer's allowance when EU nationals are caring for UK nationals in the UK.

Toby is regularly instructed in first instance hearings, including both judicial review claims and UT appeals involving a range of strategically important issues for the DWP. Currently, he is awaiting judgment in a significant case on whether the 'hospitalisation rule', which has the effect of ceasing payment of the mobility component of PIP while someone is an in-patient in hospital, is discriminatory and a breach of Article 14 ECHR.

For claimants/appellants, he has acted for victims of trafficking seeking to challenge decisions denying them adequate social security. He has also recently successfully challenged the Secretary of State's approach to recovering overpayments where

benefit recipients have allegedly 'failed to disclose' material facts: see *LH -v-SSWP (RP) [2017] UKUT 0249 (AAC)* which softens the hard-edged consequences of *Hinchy [2005] UKHL 16* and *B v Secretary of State for Work and Pensions [2005] EWCA Civ 929*.

Toby is currently advising the Department of Health in relation to the Great Repeal Bill and its consequences for reciprocal healthcare rights across the EU.

Community care

Toby is instructed by local authorities, by the Home Office and by individuals in judicial review claims challenging decisions relating to age assessments, asylum support and community care.

He appeared in the leading case on section 117 of the Mental Health Act: see *R (M) v London Borough of Hammersmith [2011] EWCA Civ 77*.

International Human Rights and Environmental law

Toby has a substantial international element to his human rights and environmental law practice. He is currently:

- Acting for the Chagossian Committee Seychelles in their ongoing attempts to secure a just solution to the exile of the Chagossians from their homeland. Led by Ben Emmerson QC, a claim is currently under consideration by the High Court. See also: *R (Horeau and others) v Secretary of State for Foreign and Commonwealth Affairs [2016] EWHC 2102 (Admin)*.
- Acting for the families of men abducted or murdered in Kosovo between 16 June 1999 and 5 July 1999, a period in which British troops were deployed there as part of the multi-national force KFOR. Led by Stephen Knafler QC, he is instructed to appeal the judgment of the High Court in *Kontic v Ministry of Defence [2016] EWHC 2034 (QB)*. The appeal has permission and is to be listed in 2018.
- Advising a Zambian community group in a proposed damages claim against a London based mining company for environmental pollution caused by its Zambian subsidiary.
- Advising the Foundation for Human Rights on the extent to which the Sri Lankan Counter Terrorism Act complies with international human rights norms: [click here](#).

Between 2014 - 2016, Toby advised the UN Special Rapporteur on extra judicial, summary or arbitrary executions on his mandate, and coordinated an expert working group in drafting the OHCHR's Minnesota Protocol on the Investigation of Potentially Unlawful Death (2017). He represents a South African women's NGO in a complaint to the World Bank's Compliance Advisor/Ombudsman in relation to the International Finance Corporation's failure to enforce environmental and human rights performance standards in its South African investments.

In the last year, he has advised a London-based NGO in relation to the potential liability of the UK government for the export of precursor agents for chemical weapons and has advised a foreign government on how best to balance freedom of expression/the right to protest with private property rights.

Toby is a CEDR accredited mediator and a member of the Chartered Institute of Arbitrators in both London and Hong Kong. He is the co-author of the chapter of freedom of expression in *Human Rights Practice*, edited by Jessica Simor.

Public Inquiries

Toby has significant experience in major public inquiries.

- From April 2015 - October 2016, he was First Junior Counsel to the Independent Inquiry into Child Sexual Abuse ('IICSA'), led by Ben Emmerson QC.
- From October 2013 - February 2015, he was co-counsel for the South African Human Rights Commission in the Marikana Commission of Inquiry, a judicial inquiry into i) the events of 16 August 2012 at Marikana, South Africa, where 34 striking miners were shot dead by police; and ii) the extent to which a mining company, Lonmin plc, and various arms of South African national and local government, had complied with their environmental and human rights obligations.
- From October 2012 - October 2013, he was junior counsel to the Leveson Inquiry, led by Robert Jay QC.