Compass Chambers

# David McNaughtan KC



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| **Year called:** | 2003 |
| **Year of silk:** | 2021 |
| **Email:** | david.mcnaughtan@compasschambers.com |
| **Qualifications:** | Practised as a Barrister and Solicitor in the High Court in Fiji (1994-1996)<br>LL.B (Hons)(Aberdeen) (1989)<br>Dip.LP(Glasgow) (1990) |

The LEGAL 500 UNITED KINGDOM LEADING SILK 2022

## Practice

With over 30 years of experience as a litigator, David's current practice is in reparation and personal injury work, acting for both pursuers and defenders.

He pursues and defends high value road traffic claims, shipping collisions, asbestos-related disease claims and abuse claims. He acted for one of the pursuers in the first successful claim for damages from the Lord Advocate for malicious prosecution. He has a special interest in cases involving accidents abroad and at sea, disputes on jurisdiction and the application of foreign law in the Scottish Courts. He has extensive experience in clinical negligence cases including high value birth trauma and spinal cord claims.

David has sat as a legal chairman in the War Pensions Appeal Tribunal since 2018. He was Standing Junior to the Advocate General from 2018 to 2021, acting on behalf of the Ministry of Defence and other government departments. He was appointed Crown Counsel in August 2021 and conducted complex and serious High Court criminal trials. He remains an ad hoc Advocate Depute.

In 2019 he completed the Advanced Advocacy (Financial Experts) Course run by the Bar Council of South Africa. He provides regular training to Devils on advocacy skills. He has been invited to teach advocacy skills to advocates in South Africa in 2024 and 2025. From 1994 to 1996 he served as State Counsel to the Director of Public Prosecutions in Fiji, and prosecuted High Court trials and appeals in the Fiji Court of Appeal.

## Representative cases

16-30 April 2024: Proof, Alexander Strachan v Glasgow City Council, ASPIC, Sheriff Chris Dickson,
Representing pursuer in his claim for damages for asbestos-injuries (pleural plaques and DPT) suffered whilst working alongside laggers in Glasgow High School in 1958. Consideration of leading authorities on nature of duty of care and breach, including recent English Court of Appeal decision in White v Secretary of State for Health & Social Care [2024] EWCA Civ. 244.

Halley v Dundee City Council
Representing family of elderly lady hit and killed by Dundee City Council van whilst crossing the road. Running proof in the Court of Session on primary liability, causation, and contributory negligence. August 2023.

SLCC v Boyles Solicitors
representing solicitor in contempt of court hearing in Inner House, July 2023.

[X pursuers] v Burtons Biscuits
March 2023. Settling fatal mesothelioma case: serious difficulties in establishing liability given very limited available evidence of asbestos exposure (working on chrysotile from brake shoes once monthly over 2 years).

Scottish Child Abuse Inquiry
7 March 2023: Representing the Lord Advocate in public hearing at Scottish Child Abuse Inquiry in relation to application to remove General Restriction Order in relation to naming 'Edgar' an alleged abuser, who is also named on petition in extradition proceedings to remove him from South Africa.

HMA v Ali Akbar: January 2022: Livingston High Court.
Rape & assault of wife. Leading evidence of complainer (screen & supporter), two child witnesses and sister (live links) – all of whom had special measures in place as vulnerable witnesses. Leading evidence of complainer's father (speaking in Punjabi) through interpreter. Relying on HMA v Ricky Martin & Rysmanowski in submissions on mutual corroboration – for two rapes and one (potential) admission by accused. Jury verdicts of guilty on assault and both rape charges.

HMA v Hill & Mason: November 2021: Glasgow High Court:
Assault to danger of life and attempt murder; 2 accused; CCTV & forensic (DNA) evidence; reluctant complainer – no prior statements at trial & did not speak to assault or injuries in evidence. Concert & self defence. Provocation. Complicated by facts – concert of two accused in one assault – but not the other. Both accused found guilty – one under deletion of use of weapon & attempted murder.

Whitehouse & Clark v Lord Advocate 2019 SLT 1269
A 5-judge bench heard arguments in relation to (i) the existence, nature and extent of the Lord Advocate's immunity at common law; and (ii) alleged breaches of the pursuer's rights under Art. 8 ECHR. Submissions made on whether the Inner House decision in Hester v MacDonald 1961 SC 370 (i) was correctly decided; and (ii) should still stand. I drafted the Note of Arguments for Paul Clark, and contributed to the written submissions on prosecutorial immunity in Commonwealth and other jurisdictions. I carried out research on the principles underlying the immunity claimed by the Lord Advocate, including consideration of Roman Law and Mackenzie's "Law & Customs of Scotland in Matters Criminal" (1687) (following upon a suggestion from the Lord President).

Lowdean & Fairley v City of Edinburgh Council 2019 SLT 819
Two cyclists had accidents at different locations on Edinburgh tram tracks. Senior counsel (Simon di Rollo QC) and I pled

their case on the basis that the layout, road markings and traffic conditions at the location of each accident were such that cyclists were required, encouraged and guided to cross the tram tracks at an acute angle, which created a hazard and posed a foreseeable risk of an accident, of which the defenders were aware. Following proof, Lady Wolffe agreeing with that approach and finding in favour of pursuers. Consideration of local authority's duties of care in terms of the Inner House decision of MacDonald v Aberdeenshire Council 2014 SC 114. Agents (Thompsons) have over a hundred such cases.

Pocock v Highland Council [2017] CSIH 76
A tripping accident. Representing pursuer in reclaiming motion. Consideration of Macdonald v Aberdeenshire Council 2014 SC 114 etc. on the content of the duty of reasonable care; and McGraddie v McGraddie 2014 SC (UKSC) 12 etc. on powers of appeal court to review first instance decisions.

Smith v Sabre Insurance Co. Ltd. [2012] CSOH 14
Defenders' plea of res judicata in respect of credit hire charges claimed on behalf of pursuer/Accident Exchange Limited. Previous action for personal injuries had been raised in Stirling Sheriff Court in respect of the same road traffic accident. It was settled on tender and acceptance in sum of £4550. Pursuer then raised further action in Court of Session for around £30,000 of credit hire charges. Lord Bannatyne upholding plea of res judicata.

Vaickuviene v J. Sainsbury plc [2012] CSOH 69
Fatal claim. Deceased was employed by defenders. He was murdered at work by a fellow employee, following a number of incidents of racist abuse. Case pled under Protection from Harassment Act 1997. Defenders argued that they could not be vicariously liable for the criminal act of their employee. Lady Clark of Calton allowing the case to proceed to proof before answer.

## Professional Memberships

Barrister and solicitor of the High Court of Fiji

## Publications

Road Traffic Accidents and the Consumer Credit Act 1974, 2000 Scottish Law Gazette 162

When is a Liability not a Liability? 2003 SLT (News) 113

The Imponderables Strike Back! 2008 (84) Green's Reparation Bulletin 1

## What The Directories Say

**Chambers UK 2020 - Ranked in Personal Injury Category**
Has an expansive practice and is proficient in matters relating to occupiers' liability, road traffic accidents and industrial

disease. He is able to handle cases involving foreign jurisdictions. He has recent experience acting for pursuers in claims involving defective hip implants under the Consumer Protection Act 1987. "He is very good with calculations in high-value cases."

**Legal 500 UK Bar 2020 - Ranked in category of Personal Injury, Medical Negligence and Professional Negligence**
"Very capable and robust in negotiation, while his attention to detail in complex clinical negligence cases is exceptional"

**Chambers UK 2019 - Ranked in Personal Injury Category**
"He works extremely hear, is very diligent and is a good communicator"

**Chambers UK 2018 - Ranked in Personal Injury Category**
"Super-efficient, always of a high calibre and always very good in a team. He'll get the work done and get to the heart of the matter." "An advocate who is highly organised and very up to date with the changes in the law. He really is at the top of his game."

**Chambers UK 2017 - Ranked in Personal Injury Category**
Has an expansive practice and is proficient in matters relating to occupiers' liability, road traffic accidents and industrial disease. He attracts praise for his organisation and attention to detail. "He is extremley hard-working and really feels the pulse of his cases. He is very friendly and empathic to his clients but is not afraid to be straight with them when required."