

Kay Springham KC

Year called: 1999
Year of silk: 2016
Email: kay.springham@compasschambers.com
Qualifications: D.E.A. (Strasbourg) (1997)
Dip. LP (1986) (Glasgow)
LL.B (Hons) (Glasgow) (1985)
Fluent French speaker



Practice

Kay's main fields of practice are Personal Injury and Clinical Negligence, Public Law and Professional Discipline.

Kay accepts instructions for both sides in personal injury and clinical negligence matters. In the personal injury field, her recent practice has included claims for serious head injuries and for catastrophic injuries, fatal claims, historic abuse cases, stress at work claims and accidents at work, including industrial diseases. In clinical negligence, Kay has experience in various areas, but particularly in birth injuries.

In the area of public law, Kay acquired a wide experience as a Standing Junior then Second Standing Junior for the Scottish Ministers. Since taking silk, she has continued to act on behalf of government, but also on behalf of those challenging government and other public bodies. She has a particular interest in human rights and equality issues, having obtained a post-graduate qualification in human rights in Strasbourg prior to coming to the Bar.

In the regulatory and disciplinary context, Kay has advised on and represented solicitors in disciplinary matters, both before the Scottish Solicitors' Disciplinary Tribunal and the Inner House of the Court of Session. She was appointed as amicus curiae to the Supreme Court in an appeal by a pharmacist. She is a legal chair of the Fitness to Practice Panels of the Scottish Social Services Council (which regulates social workers and social care workers). She is Chair of the Appeals Tribunal of the Institute and Faculty of Actuaries. She was formerly a Board member of the Scottish Legal Complaints Commission (2016-2021)

Representative cases

Reparation

A v B Limited 2022 SLT 577 - claim for damages arising out of rape and sexual assault of a child by a resident of a children's care home. Acting for local authority which placed child in care home and was responsible for authorising leave. Whether the defenders owed a duty of care to the Pursuer (No) - whether the defenders liable in negligence for the criminal acts of the resident (No). ActiOn dismissed at debate

A v XY Limited 2021 SLT 399 - alleged historic rape of female school pupil by assistant teacher. Acting for Defender, arguing substantial prejudice were action allowed to proceed. Court accepted there would be substantial prejudice due to the change in the law of vicarious liability post-*Lister v Hesley Hall*, but considered pursuer's interest in pursuing proceedings outweighed that prejudice. First decision on new limitation provisions on childhood abuse which considered whether change in law of vicarious liability post-*Lister* could constitute substantial prejudice.

Grubb v Finlay – [2017] CSOH 81 – minor RTA allegedly causing chronic pain disorder – proof and motion to dismiss case on basis of ‘fundamental dishonesty’.

David T Morrison & Co Ltd v ICL Plastics Ltd 2014 SC (UKSC) 222 - claim for reparation arising out of explosion at factory causing damage to neighbouring building; whether claim prescribed under s.11(3) of Prescription and Limitation (Sc) Act 1973.

Public law

For Women Scotland Limited v Scottish Ministers 2023 SLT 50 - acting for the Equality Network - sought and obtained permission to intervene in judicial review petition brought in relation to the statutory guidance issued under the Gender Representation on Public Boards (Scotland) Act 2018. Drafted written submission on whether the guidance mis-stated the protected characteristic of 'sex' in the Equality Act 2010 as understood in light of the Gender Recognition Act 2004.

Fair Play for Women v Scottish Ministers 2022 SLT 300 - acting for the Equality Network – sought and obtained permission to intervene in judicial review petition. Petition brought in relation to the Scottish census question on ‘sex’ and the proposed guidance to transsexual persons on how to answer that question. Represented intervener in written submissions covering legal arguments based on equality and human rights grounds.

Avaaz Foundation v Scottish Ministers 2021 SLT 1063 – Judicial review of Scottish Ministers’ failure to seek an unexplained wealth order in relation to Donald Trump and his acquisition of various golf courses in Scotland. Acting for petitioner in permission hearing – whether the time limit should be extended, having regard to the importance of the legal questions raised.

AA, Petitioner [2018] CSOH 81 - judicial review of the failure of the UK government to give Employment Tribunals the power to grant diligence on the dependence – whether breach of EU principles of effectiveness and/or equivalence.

Trump International Golf Club Sc Ltd v Scottish Ministers 2016 S.C. (U.K.S.C.) 25 - whether Scottish Ministers had no power under the Electricity Act 1989 to grant consent to windfarm application - whether condition of consent void for uncertainty.

Professional Discipline

X v Judicial Office Holder 2022 SLT 157 - Judicial review of decision of Tribunal into fitness for office of a Sheriff. Sheriff alleged to have sexually assaulted petitioner. Petitioner alleging flaws in process of investigation of complaint which led to case against Sheriff being dismissed. Acting for the Lord Advocate who intervened in the proceedings in order to represent the public interest.

Khan v General Pharmaceutical Council [2016] UKSC 64 – appointed as amicus curiae – professional regulators’ powers of sanction – whether it (or Inner House) had erred in law – whether sanction imposed was excessive and disproportionate.

Tehrani v Central Council for Nursing, Midwifery and Health Visiting 2001 SC 581 - judicial review of the respondents’ procedures with regard to article 6 of the European Convention on Human Rights.

Other

Apollo Engineering v James Scott Ltd [2012] CSIH 4 - appointed as amicus curiae where lay individual sought to represent limited company. Issues under article 6 of the European Convention on Human Rights.

PF (Linlithgow) v Watson 2002 SC (PC) 89 - Privy Council case - the right to a trial within a reasonable time in the context of criminal proceedings.

Professional Memberships

‘A’ Panel of preferred counsel for the Commission for Equality and Human Rights (2011 – date)

Legal chair of Scottish Social Services Council Fitness to Practise Panels (2018 – date)

Chair of the Appeal Panel of the Institute and Faculty of Actuaries (2022 – date)

Member of the Faculty of Advocates’ Professional Negligence Group

Former member of the Faculty of Advocates’ Equality and Diversity Committee (2016-2022)

Former Board member of the Scottish Legal Complaints Commission (2016-2021)

Former standing Junior/Second Standing Junior to the Scottish Ministers (2005 - 2016)

Publications

"The Duty of Candour in Clinical Negligence Litigation" (with J Nicolson-White, Advocate) Green’s Reparation Bulletin, 2022

Chapter on “Property Law” in “A Practical Guide to Human Rights Law in Scotland”, General Editor, The Honourable Lord Reed.

“Article 6 Examined” in Human Rights and UK Practice, vol 1, Issue 1

“To Associate...or not to Associate - article 11 of the ECHR” in Human Rights and UK Practice, vol. 1, Issue 3

“State Immunity - “What a Pity!” in Human Rights and UK Practice, Vol 3, issue 3

“Trespassing on Human Rights? The Scottish Parliament and land reform” 1999 SLT 227

Lectures and seminars

Kay has spoken at a number of conferences and seminars, primarily on human rights, public law and personal injury issues.

Personal/Misc

Panel of preferred counsel for the Commission for Equality and Human Rights (2011 – date)

Former standing Junior/Second Standing Junior to the Scottish Ministers (2005 - 2016)