

Compass Chambers



# Persuasive on Paper: Written Advocacy

Richard Pugh KC



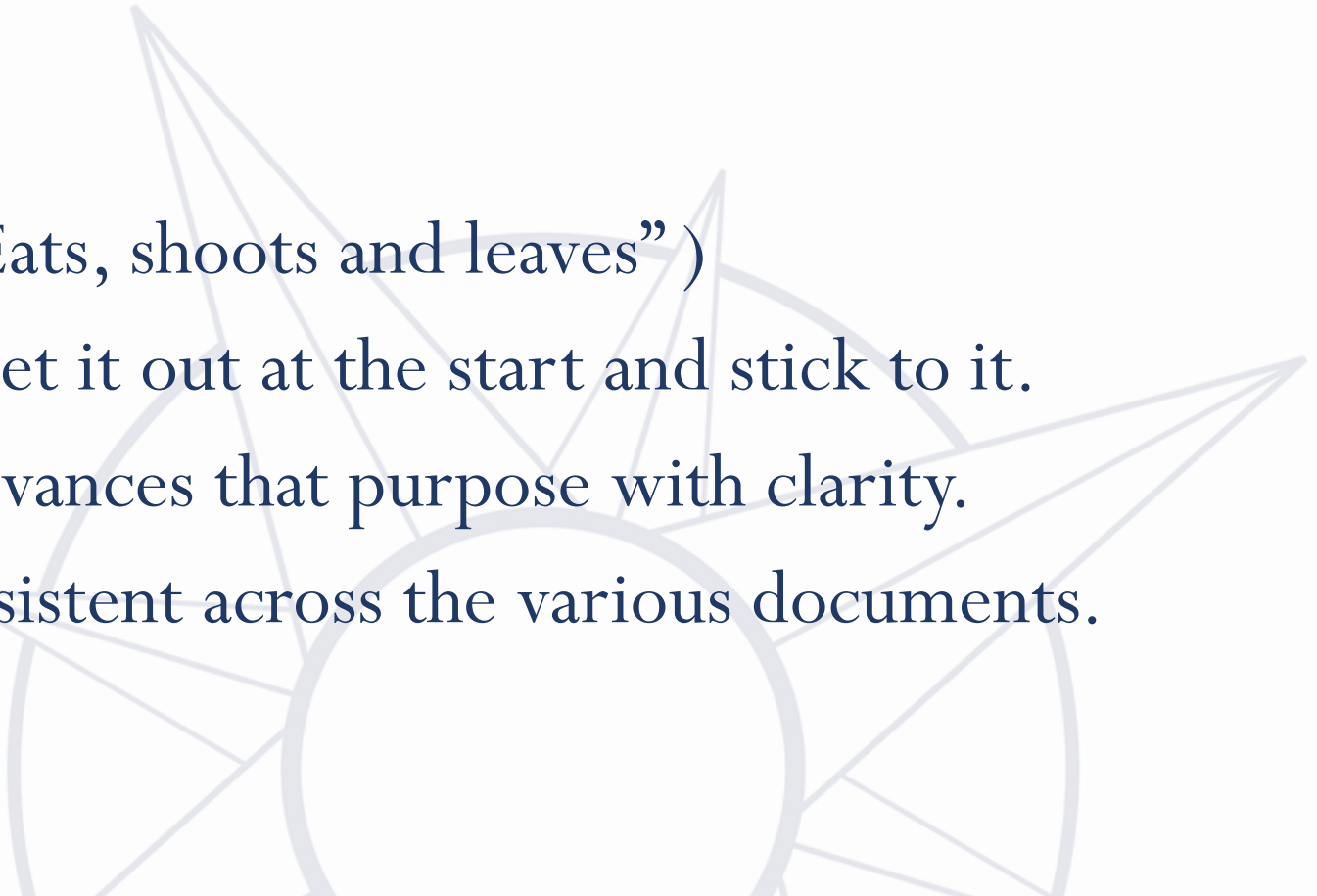
# What Counts?

- Written submissions for proof
- Notes of Argument
- Statements of Proposals
- Grounds of Appeal?
- Pleadings?
- Written motions?
- Witness Statements?





# Basic Principles

1. Be accurate.
  2. Be concise.
  3. Use correct grammar. (“Eats, shoots and leaves”)
  4. Consider your purpose. Set it out at the start and stick to it.
  5. Create a structure that advances that purpose with clarity.
  6. Make your argument consistent across the various documents.
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## Formal Guidance

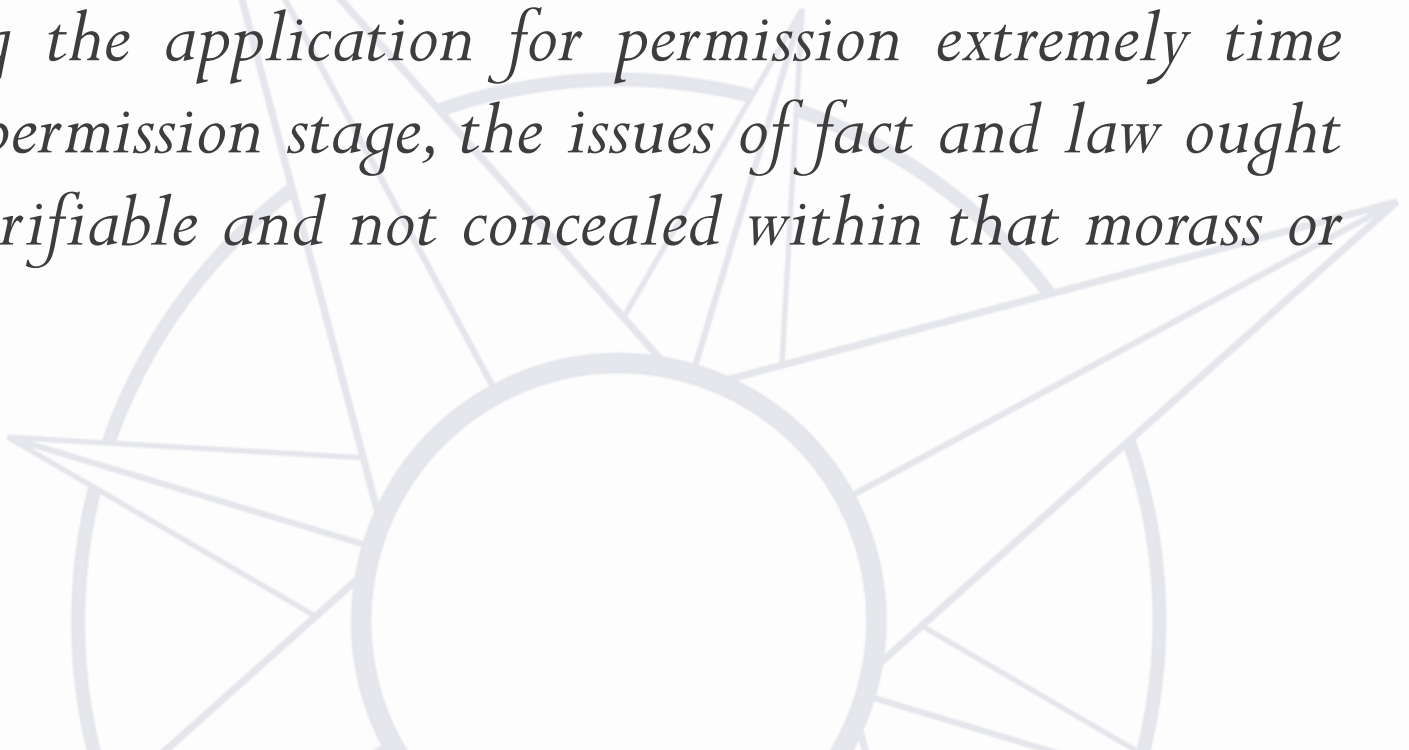
*“[10] Identifying the issue which this petition seeks to raise is not straightforward. The averments do not follow the principles of pleading for judicial review set out in Somerville v Scottish Ministers (Lord Hope, para 65), namely that:*

*'The factual history should be set out succinctly and the issues of law clearly identified. The aim is to focus the issues so that the court can reach a decision upon them, in the interests of sound administration and in the public interest, as soon as possible.'*



## Formal Guidance

*If the court is faced with a morass of factual averment and bombarded with authorities, which turn out to be mere examples of, or variants on, the same theme, it will find processing the application for permission extremely time consuming. Especially at the permission stage, the issues of fact and law ought to be more or less instantly verifiable and not concealed within that morass or under that bombardment.*





## Formal Guidance

*[11] This petition is almost 40 pages long. It contains 115 paragraphs. It is hampered by the inclusion of aphorisms derived from isolated judicial dicta . It is dotted with references to over 50 cases, which, if the court were actually expected to look at them in any meaningful way, would take days to absorb. The only plea in law on the merits is in entirely bland, and thus almost meaningless, terms, namely that the UK Government's 'position' on revocability is 'unlawful et separatim wrong in law'."*

Wightman v Advocate General 2018 SC 388





# Formal Guidance – Notes of Argument

## Practice Note 1 of 2017 (Commercial Actions)

26. *A note of argument should comply with the following general principles:*
- a. A note of argument should be a concise summary of the submissions to be developed.*
  - b. It should contain a numbered list of the points which the party wishes to make.*
  - c. Each point should be followed by a reference to any transcript of evidence or other document on which the party wishes to rely. The note of argument should identify the relevant passage in the document in question.*
  - d. At the beginning of the note there should be a succinct executive summary of the party's arguments. The executive summary should not exceed one page in length.*



# Formal Guidance – Notes of Argument

## Practice Note 2 of 2021 (Inner House)

*“4. To keep the pleadings to the minimum necessary, the Court reminds practitioners that grounds of appeal and a note of argument should be sufficient for the Court to hear a case. If those are provided then there should be no need for parties to exchange and submit written submissions as well. The note of argument must be based on the grounds of appeal. It should not be used to attempt to introduce new points.*”





## Formal Guidance — Notes of Argument

*5. The note of argument should normally not exceed 25 pages; leave of the Court is required if it is proposed to exceed the page limit. The note must be double-spaced and in font size 12; it must be single-sided. It must not contain footnotes. It is to refer to all the authorities to be relied upon. Only disputed propositions require the citation of authority. More than one authority should not be cited in support of a disputed proposition. No more than 10 authorities should be cited in total unless the scale of the reclaiming motion, application or appeal warrants more extensive citation. If it is proposed to cite more extensively leave of the Court is required. Parties are therefore encouraged to consider carefully which authorities require to be cited and temper their note of argument accordingly.”*



# Formal Guidance – Notes of Argument

## UKSC Practice Direction 6

*6.3.1 The case is the statement of a party's argument in the appeal. The Court does not prescribe any maximum length but the Court favours brevity and a case should be a concise summary of the submissions to be developed. A case should not (without permission of the Court) exceed 50 pages of A4 size and in most cases fewer than 50 pages will be sufficient.*([4](#))

*6.3.2 The case should be confined to the heads of argument that counsel propose to submit at the hearing and omit material contained in the statement of facts and issues (see paragraph 5.1.3 of [Practice Direction 5](#)).*



# Formal Guidance - Affidavits

## Practice Note 1 of 2018

*[12] The drafter must not frame the affidavit in language that the witness would not use. The court is likely to attach little weight to such an affidavit. Equally, the court is likely to discount the witness's evidence if it appears that he or she has been improperly briefed or coached. The affidavit is the evidence of the witness, and must therefore be expressed in the witness's own words — even where this results in the use of confused or intemperate language. In preparing an affidavit, legal advisers should bear in mind that the witness may have to justify on cross-examination statements contained in the affidavit. Legal advisers should make this clear to the witness.*



## Formal Guidance - Affidavits

*[13] It should be clear from the terms of the affidavit whether the witness is speaking from his or her own knowledge, based on what he or she actually saw or experienced, or whether the witness is relying on what he or she was told by a particular person.*

*[14] The affidavit should be drafted in the first person and should take the form of short numbered paragraphs. It should be as succinct as possible, and focus only on matters that are relevant to the issues in dispute, as averred on record. The court will disregard any irrelevant or inadmissible material.*

## Pitfalls to avoid

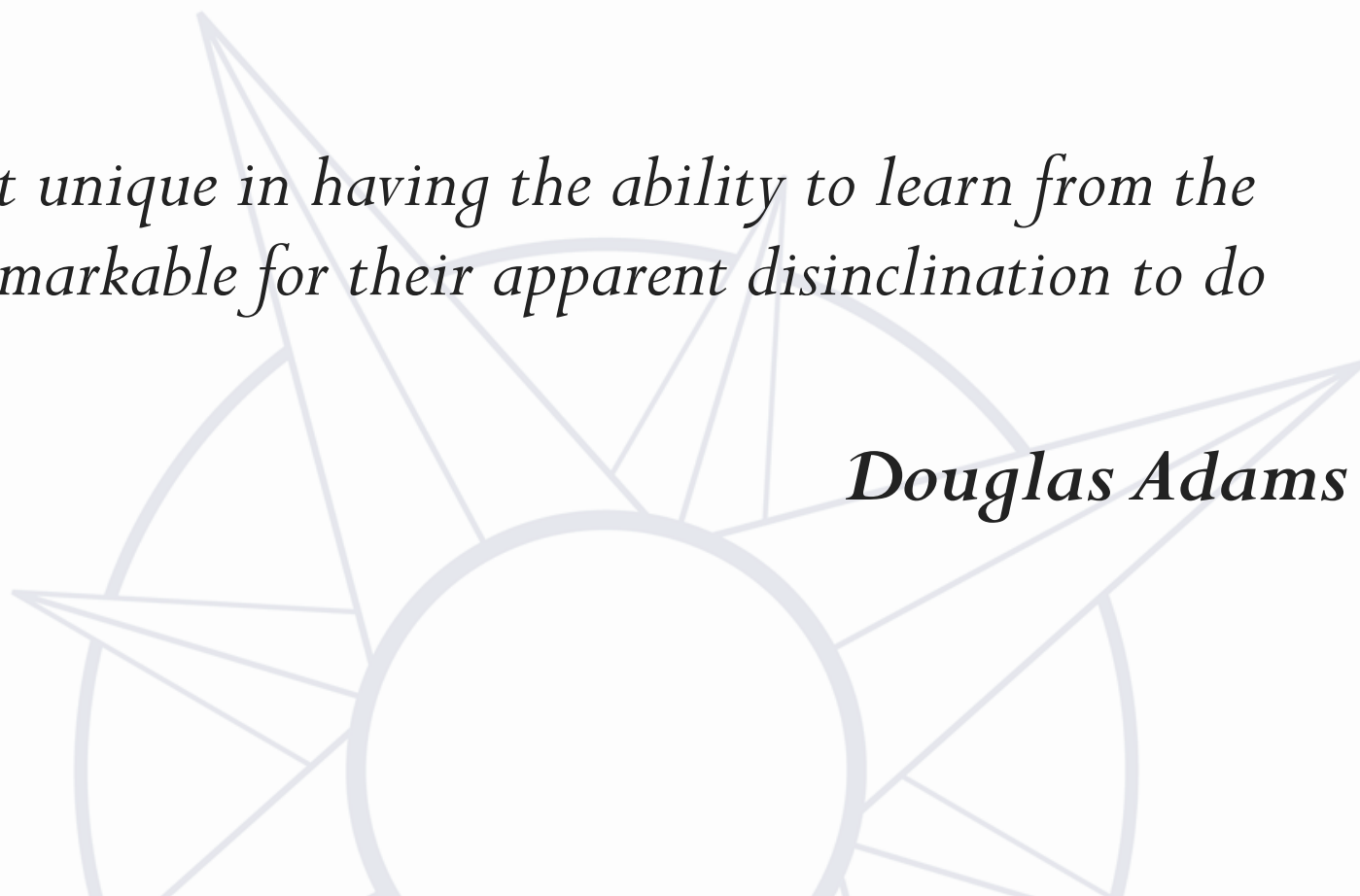




## Pitfalls to avoid

*“Human beings, who are almost unique in having the ability to learn from the experience of others, are also remarkable for their apparent disinclination to do so.”*

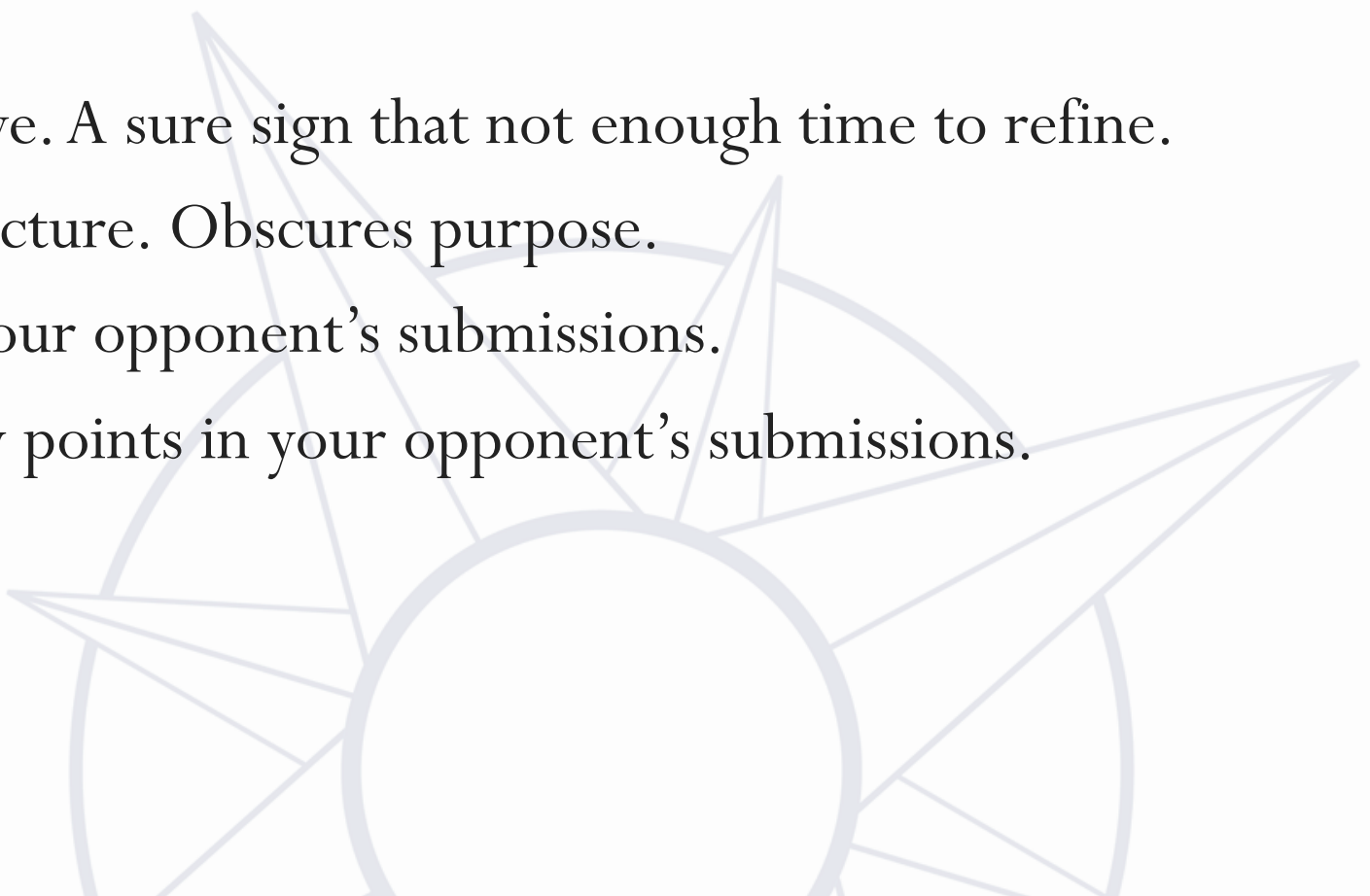
***Douglas Adams***







## Pitfalls to avoid

1. Being too wordy or repetitive. A sure sign that not enough time to refine.
  2. Creating too complex a structure. Obscures purpose.
  3. Trying to respond to all of your opponent's submissions.
  4. Failing to respond to the key points in your opponent's submissions.
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# Compass Chambers



**Parliament House**

**Edinburgh**

**EH1 1RF**

**DX 549302, Edinburgh 36**

**LP 3, Edinburgh 10**

**[www.compasschambers.com](http://www.compasschambers.com)**

**Your Name,**

**Advocate**

**Mobile:**

**[Your.name@compasschambers.com](mailto:Your.name@compasschambers.com)**

**Gavin Herd**

**Practice Manager**

**Phone: 0131 260 5648**

**Fax: 0131 225 3642**

**[gavin.herd@compasschambers.com](mailto:gavin.herd@compasschambers.com)**