

Scott Blair

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Areas of Practice

Administrative & Constitutional Law, Adults with Incapacity (AWI), Agriculture, Asylum, Child, Civil Liberties, Common Good, Criminal Injuries Compensation, Crofting Law, Data Protection, Discrimination, Education, Employment Law, Environmental, European Law, Extradition, Fatal Accident Inquiries (FAI), Freedom of Information, Housing, Human Rights, Immigration, International Public Law, Judicial Review, Licensing, Local Government, Media, Mental Health, Military Law, Planning, Prison, Public Sector Regulation, Social Security, Social Work.

Year of Call: 2000

Devil Masters: Norman Ritchie QC, JMW Thomson QC, Robert G Skinner

Qualifications: LL. B (Hons), University of Glasgow (First Class Honours), 1991

Biography:

Worked as a solicitor in private practice before calling in 2000. He specialises in a wide range of public law issues. He has been instructed in cases in the European Court of Human Rights, House of Lords, Judicial Committee of the Privy Council, both the Inner and Outer House of the Court of Session, the High Court of Justiciary at first instance and on appeal, the Sheriff Court and before various tribunals, licensing boards and local authority regulatory committees.

News:

In what is believed to be the first decision of its kind under the Licensing (Scotland) Act 2005, Scott secured a successful outcome for the Board in *Drinkcafe Ltd v City of Glasgow Licensing Board*. There the Board refused an application to vary the hours of opening of a West End nightclub from 2am to 3am. City Centre entertainment style premises enjoy 3am opening under Board policy, West End premises have 2am in terms of policy. The Herald has suggested that this is a landmark ruling which will have important implications for the trade and Licensing Boards ([see Herald article](#)).

The appellants argued that the Board were not entitled to refuse the application on the grounds that to grant it would breach the licensing objectives of prevention of crime and disorder and prevention of public nuisance. They argued that as there was no evidence that the premises did cause any of such problems that the licensing objectives were not engaged and that policy alone was not a proper basis for refusal. By accepting the submissions advanced by Scott, Sheriff Craig Scott accepted that under the Licensing (Scotland) Act 2005, a licensing board was entitled to refuse an application for variation of hours on policy grounds even where there was no actual evidence of disorder or nuisance.

Taking account of the policy decision that different terminal hours were justified in different parts of Glasgow, he held that the decision of the Board could be justified on the basis that in policy terms the Board could decide whether late opening in one part of the city could have a knock-on effect on the control of crime and disorder or nuisance in other parts of the city such that the objectives were engaged. For a copy of the judgment follow this link: [Drinkcafe Ltd t/a Boho v The City of Glasgow Licensing Board](#)

Scott acted for the City of Glasgow Licensing Board in two recent cases before the Sheriff Principal at Glasgow.

In *Kaya v City of Glasgow Licensing Board*, Scott successfully resisted an attempt to lift a six month suspension imposed on a city centre pub following a series of public order incidents. Under the Licensing (Scotland) Act 2005 a decision to suspend a premises licence by a Licensing Board has immediate effect unless the balance of convenience favours the licence holder. Relying on extensive citation of authority including the human rights doctrine of proportionality Scott successfully persuaded Sheriff Principal James Taylor that the balance of convenience lay in respecting the decision of the Licensing Board pending a full hearing of the case. The case is to be the subject of an article by Paul Romano of Glasgow City Council in *Scottish Licensing Law Practice*.

The day before *Kaya*, Scott also appeared for the Glasgow Board in successfully defending a decision to restrict the hours of operation of a social club. In *Carmunnock Village Recreation Club v City of Glasgow Licensing Board* the Sheriff Principal held that the Board was entitled to find that grant of hours which would have taken the Club back to the hours enjoyed under the Licensing (Scotland) Act 1976 could be justified on the grounds that the grant of the application would be inconsistent with the licensing objective of preventing public nuisance. The case could be seen as a departure from the traditional approach to cases on policy hours and represents a further step building on the earlier decision of the Sheriff Principal in *Kell (Scotland) Ltd v City of Glasgow Licensing Board*, a case in which Scott also acted for the Board.

Scott has also been involved in advising both Licensing Boards and applicants in relation to applications for review of premises licences; irresponsible promotions; policy statements; over provision; the reach of the health objective and the objective of preventing children from harm.

Currently he is heavily involved in cases arising from the licensing of taxi booking offices throughout Scotland and he continues to have a considerable practice in Civic Government licensing generally, with particular emphasis on taxi and private hire work.

In his licensing practice Scott acted for the successful appellant in *Shafiq v North Lanarkshire Licensing Board*. The case was decided by Sheriff Powrie at Hamilton Sheriff Court on 23 January 2009. This is one of the very first appeals to be decided under the new Licensing (Scotland) Act 2005. The appellant had applied for a premises licence under the new Act but this was refused by the Board on the basis of the crime prevention objective. In deciding the appeal the Sheriff reversed that decision and ordered the Board to grant the licence. The case arose from a police test purchase operation leading to the conviction of the appellant for the sale of alcohol by an assistant to an under age person. The decision contains detailed consideration of the correct test to be applied when considering the crime prevention objective in section 4 of the Act, the weight to be given to the decision of the police not to object to the application and the issue of whether a test purchase failure has any greater significance than any other type of under age sale. The full judgement can be found at the Scot Courts website at http://www.scotcourts.gov.uk/opinions/B1205_08.html

He has also been heavily involved in the litigation arising out of the controversial test purchasing scheme operated by the police in Fife in relation to sales of alcohol to under age test purchasers in off sales premises.

Scott now also sits as part-time Immigration Judge in the Asylum and Immigration Chamber.

In his licensing practice, he acted for the Scottish Beer and Pub Association in their recent successful challenge to the policy of the City of Glasgow Licensing Board to seriously restrict the use of traditional glassware in licensed premises. He has also been heavily involved in advising a number of clients on the implications of the smoking ban in licensed premises.

Cases:

Licensing Boards and Local Authority Committees: Mr Blair appears on a regular basis for both applicants and objectors before Licensing Boards and local authority committees in a range of areas including liquor licensing, betting and gaming and cases under the Civic Government (Scotland) Act 1982. He has specific experience of hearings involving the suspension of liquor licences. His experience extends to appeal and judicial review work arising from the

decisions of these bodies.

European Court of Human Rights: *E and others v. United Kingdom* (2003) 36 EHRR 31 (human rights-established breaches of Articles 3 and 13 arising from negligent failure of social workers to protect children from sexual abuse)

House of Lords: *Helow v Advocate General for Scotland and Lord Advocate* [2008] UKHL 62 (asylum appeal and whether decision of judge in refusing petition for statutory review of refusal of that appeal flawed for alleged bias arising from membership of association objectionable to the appellant)

Judicial Committee of the Privy Council: *R v. HM Advocate and Advocate General for Scotland*, 2003 SC (PC) 21 (constitutional law and human rights-breach of reasonable time requirement under Article 6 ECHR led to dismissal of prosecution due to Scotland Act 1998 and also defined scope of many key provisions of that Act); *Flynn and others v. HM Advocate*, 2004 SC (PC) 1 (human rights and sentencing-established that existing life prisoners should not be prejudiced by the imposition of mandatory punishment parts)

Inner House: *Smith v. North Lanarkshire Licensing Board*, 2005 SLT 544 (liquor licensing- successful appeal against suspension of licence); *Cannell v. Scottish Ministers*, 2003 SLT (planning and human rights); *Koca v. Secretary of State for the Home Department*, 2005 SLT 838 (asylum-immigration appeal hearing held to be unfair); *Wright v. Scottish Ministers*, 2005 SLT 613 (extradition and human rights); *Torabi v. Home Secretary*, 5 May 2006 (decision to return woman to Iran to face prosecution and possible execution by stoning for alleged adultery legally flawed); *Donaldson v Renfrewshire Council* [2011] CSIH 66 (successful appeal against the decision to refuse renewal of a late hours catering licence as an exception to policy).

Outer House: *Catscratch Ltd (No2) v. City of Glasgow Licensing Board*, 2002 SLT 503 (liquor licensing and human rights-fair hearing and peaceful possession rights under ECHR applied to licensing boards); *Spirit Group plc and Mitchells and Butlers Limited v. City of Aberdeen Licensing Board*, 2005 SLT 13 (liquor licensing-attempt to impose minimum pricing on sale of alcohol unlawful); *London and Edinburgh Inns Ltd v. North Ayrshire Licensing Board*, 2004 SLT 848 (liquor licensing-consideration of effect of transfer of licence); *Phipps v. Royal College of Surgeons of Edinburgh*, 2005 CSOH 78 (professional regulation and administrative law-decision to remove professional accreditation of surgeon unreasonable); *Beggs v. Scottish Ministers*, 2004 SLT 755 (Crown proceedings-prison transfer- interim declarator against the Crown competent notwithstanding Crown Proceedings Act 1947); *Khairandish v. Secretary of State for the Home Department*, 2003 SLT 1358 (asylum-international treaties and legitimate expectation); *Buzzworks Leisure Limited v South Ayrshire Board and J.D. Wetherspoon Plc* [2011] CSOH 146 (successful challenge to decision to grant provisional premises licence to J.D. Wetherspoon).

High Court of Justiciary: *McDonald v. Dickson*, 2003 SLT 467 (human rights-whether bail conditions violated ECHR).

Also **Appeal Court** stages of *R v. HMA and Advocate General for Scotland* and *Flynn and others v. HM Advocate*.

Sheriff Court: *Shafiq v North Lanarkshire Licensing Board*, 23 January 2009, Hamilton Sheriff Court (Licensing (Scotland) Act 2005 - failure of police test purchase - refusal of premises licence application on crime prevention grounds - decision of Board reversed on appeal); *O'Rea v. Hagan*, 2001 SLT (Sh Ct) 30 (education and human rights-prosecution of parent of alleged truant did not breach ECHR); *BP Express Shopping Ltd v. West Fife Divisional Licensing Board* [2007] 37 SLLP 29 (test purchasing under Licensing (Scotland) Act 2005); *Alldays Stores Ltd v. Central Fife Licensing Board* [2007] 37 SLLP 34; *Donald v City of Edinburgh Council*, 6 May 2011 (successful appeal against refusal of grant of taxi licence on ground that policy limit on number of licences reached by allocation of plates to those on a waiting list - Sheriff holding that the waiting list was illegal); *Lidl GmbH v City of Glasgow Licensing Board*, 4 November 2011 (successful defence of decision of Board to suspend premises licence following upon single test purchase failure).

Publications:

Scots Administrative Law: Cases and Materials (W Green/ Sweet & Maxwell, 1999)

A Practical Guide to Human Rights in Scotland, The Hon. Lord Reed (ed) (W Green/ Sweet and Maxwell, 2001),
(chapter on public law and human rights)

Scottish Human Rights Service, The Hon. Lord Reed and Prof. A Miller (eds), (looseleaf, W Green/ Sweet and
Maxwell), (chapter on constitutional and administrative law)

Scottish Licensing Law (forthcoming)

Numerous articles in Scots Law Times, Scottish Licensing Law & Practice, Civil Practice Bulletin, Scottish Human
Rights Journal, Scottish Constitutional and Administrative Law & Practice, Scottish Parliament Law Review.

Appointments:

Preferred Panel of Counsel to the Equality and Human Rights Commission, 2011 to date

Member Licensing Law Sub Committee of the Law Society of Scotland, 2007 to date

Legal Member of the Mental Health Tribunal for Scotland, 2007 to date

Immigration Judge of the Asylum and Immigration Chamber

Tutor and some time Lecturer in administrative law, University of Glasgow, 1991 to 2005

Member Faculty of Advocates Human Rights Committee

Further Information:

Member of the Bar Planning, Local Government and Environmental Law Group

Member of the Crofting Law Group