

# Clayton Comments

Richard Clayton QC

[www.claytoncomments.com](http://www.claytoncomments.com)



**Richard Clayton QC**

**Year of Call: 1977**

**Silk: 2002**

*He's willing to listen, tactically astute, knows a lot about core procedure and is good at identifying the key issues of a case." Chambers Directory 2020 (Civil Liberties & Human Rights)*

*"A very knowledgeable silk" Legal 500 – 2020 (Civil Liberties & Human Rights)*

*"Regularly instructed in Privy Council." "He is very intellectually able." Legal 500 – 2020 (Administrative & Public)*

*"One of the finest minds at the Bar... an intellectual giant who is an asset to the Bar" Chambers Directory 2019*

*"Very sharp when it comes to tactics. He is very good at guiding you on what the judge is likely to be thinking, his "command of the subject is almost second to none. He's thoughtful, approachable, and very client-focus", "affable and has a mature approach" "calm, reliable and consistent" and "has a very wide knowledge of the law." Chambers Directory 2018*

## PRACTICE AREAS

Richard is a commercial litigator / arbitrator and undertakes a wide range of advisory and litigation public law work (both for and against public bodies) covering community care, data protection, discrimination, environmental, healthcare, human rights, local government (e.g. *vires* and powers, constitutional issues and governance, elections, finance and business rates), tax, public procurement, Privy Council, international work (particularly constitutional work) and regulatory/disciplinary work.

He has extensive experience in conducting Supreme Court and Privy Council appeals. Lord Wilson in *Mohammed v Public Service Commission of Trinidad* [2017] UKPC 31 said "Mr Clayton QC with the charm and skill which is characteristic of him".

## COMMERCIAL

Richard has experience of all types of complex commercial disputes. He has particular expertise in contractual issues which arise in the public sector including public procurement. Richard undertakes emergency injunction work such as freezing and seizure orders as well as arbitrations. He acts in cases concerning commercial contracts, civil fraud, breaches of

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directors' duties, insolvency, restitution, shareholders' rights, issues of statutory or contractual construction and public international law.

Current cases include representing a claimant in a \$US 150 m arbitration arising from Qatar, defending damages claim for conspiracy where a strike out/summary judgment claim is pending, acting as an arbitrator in a commercial dispute between a local authority and a private sector care provider, advising in relation to a £7m claim against two banks alleged to be jointly liable with financial advisors for fraud, advising various local authorities in relation to procurement issues and an allegedly unlawful cartel arrangements concerning several construction contracts in Trinidad representing a former Minister.

## **PUBLIC LAW & REGULATORY**

Richard undertakes a wide range of advisory and litigation work (both for and against public bodies) covering tax, community care, data protection, discrimination, environmental, healthcare, human rights, local government (e.g. vires and powers, constitutional issues and governance, elections, finance), public procurement, international work (particularly constitutional work) and regulatory/disciplinary work.

## **ADMINISTRATIVE & PUBLIC LAW**

### **What Chambers and Partners say:**

- *"He is very, very clever"*
- *"He is affable and has a mature approach"*
- *"Calm, reliable and consistent"*
- *"He has a very wide knowledge of the law"*
- *"A well-respected public lawyer, who is a very vigorous and forceful opponent"*
- *"Praised for his preparation and his ability to manage difficult situations"*
- *"Brilliant on his feet"*
- *"Very likeable and imaginative"*
- *"He is particularly recommended for thinking laterally on cases"*
- *"He's the sort of guy you'd ring up to find a new point in a case"*

### **Recent public law cases of note include:**

- *Southwark LBC v Ludgate House (2020)* (CA- whether "guardianship schemes" exempt from business rates)
- *R(Hauret) v HMRC (2020)* (EU challenge that loan charge legislation is a disproportionate interference with freedom of movement of capital)
- *R(Hannah) v Chartered Institute of Taxation (2020)* (fairness and HRA challenge to Institute's referral of his case to Taxation Disciplinary Board)

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- *R(Zeeman and Murphy) v HMRC* (2020) (CA- HRA challenge to loan charge legislation as disproportionate interference with right to property)
  - *Hollandwest v HMRC* (2019) (injunctions granted to preserve right of access to Court to clarify Supreme Court decision, *OWD Ltd v HMRC* (2019))
  - *Jones v Teaching Regulation Authority* (2019) (whether Secretary of State had power to supplement his statutory procedures by using common law power)
  - *R (British Homeopathy Association v National Health Service England)* (2018) (consultation challenge to terminating homeopathy treatment)
  - *R (Page) v Darlington Borough Council* (2018) (closure of library services)
  - *R(South Yorkshire County Council v Sheffield Combined Authority* (2017) (local government reorganisation)

## HUMAN RIGHTS

### What Chambers and Partners say:

- *“He’s an encyclopaedia of human rights law”*
- *“His strength is his knowledge”*
- *“Richard is a go-to silk for human rights issues, he is a pleasure to work with and has an instinctive grasp of what the courts will think”*
- *“He’s very proactive. He’ll think around his cases and come up with creative ideas”*  
*“incredibly bright”* and has *“fantastic academic ability”*
- *“Clients highlight the confidence they have when instructing him. He undertakes a balance of work for both claimants and defendants, and has appeared in the Caribbean, Hong Kong and the Privy Council, as well as in numerous matters in the domestic court”*

### Recent human rights and civil liberties cases of note include:

- *Responsible Development to Abaco v Rt Hon Perry Chrisitie* (2021) (constitutional challenge to Bahamas security for costs orders in environmental cases- Privy Council)
- *Hapgood v AG of Anguilla* (2021) (whether alleged contempt is a “criminal cause”- Privy Council)
- *Seepeersad v AG of Trinidad* (2021) (whether detaining detention of juveniles in adult prison breaches constitutional rights)
- *AG of Anguilla v Lake* (2021) (compulsory purchase compensation acting for AG)
- *RHauret v HMRC* (2021) (whether loan charge legislation breaches EU right to freedom of movement of capital)
- *R(Hannah) v Chartered Institute of Taxation* (2020) (fairness and HRA challenge to Institute’s referral of his case to Taxation Disciplinary Board)
- *Hollandwest v HMRC* (2019) injunctions granted to preserve right of access to Court to clarify Supreme Court decision, *OWD Ltd v HMRC*)

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- *Maharaj v Petroliam Company of Trinidad* (2019) (freedom of information- Privy Council)
  - *AG of Trinidad v Maharaj* (2018) (judicial appointments of Supreme Court judges- Privy Council)
  - *Seepersad v Ayers-Ceasar* (2018) (interim constitutional remedies- Privy Council)
  - *Central Broadcasting Services v AG of Trinidad* (2018) (damages for breach of freedom of expression- Privy Council)
  - *Mohammed v Public Service Commission of Trinidad* (2017) (separation of powers-) Privy Council)
  - *Tayo v Charity Commission* (2017) (discrimination)
  - *Magyar Helsinki v Hungary* (2016) (Art 10 and right of access to official information before Grand Chamber of European Court of Human Rights)
  - *Kennedy v Charity Commission* (2015) (Supreme Court- Freedom of Information, Art 10 and common law rights);

## LOCAL GOVERNMENT

### What Chambers and Partners say:

- *"Particularly instructed for vires and procurement law matters"*
- *"A delightful and talented advocate"*
- *"A razor-sharp mind" and an "extremely accessible manner, he is never short of work."*
- *"He has a huge fan base of local authorities happy to sing his praises".*
- *"He is extremely bright and very creative in finding workable solutions to tricky problems"*

## OFFSHORE & INTERNATIONAL

Richard undertakes public and constitutional law, both in the Privy Council and internationally. He sits as a Deputy High Court judge and as an international arbitrator. He undertakes work in the Caribbean (Anguilla, Bahamas, Belize, Cayman, St Vincent, Trinidad, Turks & Caicos), Canada, US, Channel Islands, Gibraltar, Hong Kong and Isle of Man.

Richard is instructed in many high profile cases in Trinidad. He is currently instructed to defend a senator defamation proceeding brought by the Prime Minister and in allegedly unlawful cartel arrangement concerning several construction contracts on behalf of a former Minister.

Richard was the United Kingdom representative to Venice Commission (Council of Europe's advisory body on constitutional law) from 2011 to 2019. The Commission comprises independent experts in the field of constitutional law. Richard was a member of its Executive and Chairman of its Sub-Commission on Working Methods. He worked as a

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Rapporteur in Opinions concerning conscription and freedom of thought (Armenia), freedom of assembly (Russia), freedom of expression and defamation (Azerbaijan) (Italy) and judicial independence and mediation (Tajikistan), freedom of association and NGOs (Azerbaijan), (Hungary) and Romania and the rule of law crisis in Poland Malta and Slovakia.

## Recent cases include:

- *Responsible Development to Abaco v Rt Hon Perry Chrisitie* (2021) (constitutional challenge to Bahamas security for costs orders in environmental cases- Privy Council)
- *Hapgood v AG of Anguilla* (2021) (whether alleged contempt is a “criminal cause” - Privy Council)
- *Seepersad v AG of Trinidad* (2021) (whether detaining detention of juveniles in adult prison breaches constitutional rights- Privy Council)
- *AG of Anguilla v Lake* (2021) (compulsory purchase compensation acting for AG- Privy Council)
- *R v Miniss (as Prime Minister of Bahamas) ex p Armbrister* (2020) (Bahamas constitutional challenge to Covid legislation)
- *Garcia v Commissioners of Inquiry* (2020) (Trinidad judicial review of Commissioners of inquiry into Las Alturas Towers)
- *Calder Hart v Commission of Inquiry* 2020) (Trinidad judicial review of Commissioners of inquiry into Las Alturas Towers)
- *Maharaj v Petrotrin Company of Trinidad* (2019) (freedom of information- Privy Council)
- *Commissioner of Police for Trinidad v Singh* (2019) (discrimination- Privy Council)
- *Garcia v Commissioners of Inquiry* (2020) (Trinidad judicial review of Commissioners of inquiry into Las Alturas Towers)
- *Gopeesingh v Al Rawi* (2019) (Trinidad CA- election bias application against Chief Justice)
- *R v Sturges* (2019) (Trinidad CA- successful contempt appeal for advocate in criminal trial)
- *AG of Trinidad v Maharaj* (2018) (judicial appointments of Supreme Court judges- Privy Council)
- *Seepersad v Ayers-Ceasar* (2018) (interim constitutional remedies)
- *Central Broadcasting Services v AG of Trinidad* (2018) (damages for breach of freedom of expression- Privy Council)
- *Mohammed v Public Service Commission of Trinidad* (2017) (separation of powers- Privy Council- Privy Council)
- *R v Misick* (2014) (8 day hearing before CA in Turks and Caicos).



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## Richard's Privy Council cases also include:

- *Surratt v AG of Trinidad (No 2)* (2009) (damages for breaching constitutional right to protection of the law)
- *Panday v Virgil* (2008) (representing former Prime Minister of Trinidad in abuse of process complaint following successful bias appeal before Trinidad Court of Appeal)
- *Suratt v AG of Trinidad* (2008) (anti-discrimination legislation constitutional, reversing Trinidad CA)
- *Toussaint v AG of St Vincent* (2007) (right of access to the court and parliamentary privilege)
- *BACONGO v Department of Environment No 2* (2004) (adequacy of environmental impact assessment)
- *BACONGO v Department of Environment* (2003) (jurisdiction of PC to grant interim injunction in pending appeal).

## Richard's cases before the European Court of Human Rights include:

- *Kennedy v United Kingdom* (2017) (freedom of expression and freedom of information)
- *Magyar Helsinki Bizottság v. Hungary* (2017) (Grand Chamber- freedom of expression and freedom of information)
- *S v United Kingdom* (2009)(Grand Chamber- retention of DNA for individuals arrested but not charged breached Article 8, reversing House of Lords in *Marper*, 2004)
- *Liberty v United Kingdom* (2009) (statutory scheme authorising telephone interception to and from UK breached Article 8).

## Supreme Court, House of Lords and Privy Council Appeals:

- *Responsible Development to Abaco v Rt Hon Perry Chrisitie* (2021) (PC) (constitutional challenge to Bahamas security for costs orders in environmental cases)
- *Hapgood v AG of Anguilla* (2021) (PC) (whether alleged contempt is a "criminal cause")
- *Seepersad v AG of Trinidad* (2021) (PC) (whether detaining detention of juveniles in adult prison breaches constitutional rights)
- *AG of Anguilla v Lake* (2021) (PC) (compulsory purchase compensation acting for AG)
- *Maharaj v Petroleum Company of Trinidad* (2019) (PC) (freedom of information)
- *Commissioner of Police for Trinidad v Singh* (2019) (PC) (discrimination)
- *AG of Trinidad v Petrotrin* (2019) (PC) (freedom of information)
- *The Commissioner of Police for Trinidad v Singh* (2019) (PC) (discrimination)
- *AG of Trinidad v Maharaj* (2018) (PC) (judicial appointments of Supreme Court judges)

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- Seepersad v Ayers-Ceasar (2018) (PC) (interim constitutional remedies);  
Central Broadcasting Services v AG of Trinidad (2018) (PC) (damages for breach of freedom of expression)
  - Mohammed v Public Service Commission of Trinidad (2017) (PC) (separation of powers)
  - Kennedy v Charity Commission (2014) (SC) (Freedom of Information, Art 10 and common law rights)
  - Suratt v AG of Trinidad (No 2) (2009) PC (damages for breaching constitutional right to protection of the law)
  - Panday v Virgil (2008) (PC) (representing former Prime Minister of Trinidad in abuse of process complaint following successful bias appeal before Trinidad Court of Appeal)
  - Suratt v AG of Trinidad (2008) (PC) (anti-discrimination legislation constitutional, reversing Trinidad CA)
  - R(Huang) v SSHD (2007) (HL) (important case on proportionality principles)
  - Toussaint v AG of St Vincent (2007) (PC) (right of access to the court and parliamentary privilege);
  - R (Greenfield) v SSHD (2005) (HL) (Human Rights Act damages)
  - R (Smith) v Parole Board (2005) (HL) (common law fairness, not Articles 5 and 6 ECHR requires oral hearing)
  - BACONGO v Department of Environment No 2 (2004) (PC) (adequacy of environmental impact assessment)
  - BACONGO v Department of Environment (2003) (PC) (jurisdiction of PC to grant interim injunction in pending appeal)
  - AG v Blake (2001) (HL) (confiscation of advance of royalties on autobiography-common law human rights, restitutionary damages, account);
  - R v Chief Constable West Midlands Police (1994) (HL) (public interest immunity)

## Appointments:

- Deputy High Court Judge (2012)
- United Kingdom's representative to Venice Commission (Council of Europe's advisory body on constitutional law) (2011- 2019); Member of Executive and Chairman of Working Methods Sub-Commission
- Recorder (Crown Court) (2006)
- Bencher, Middle Temple (2009)
- Visiting Professor, University College, London (2015 to date)
- Chairman, Constitutional and Administrative Bar Association (2008-2010)
- Associate Fellow, Centre for Public Law, University of Cambridge since 2001
- Chairman, Bar Council Committee on Civil Legal Aid 2005-2012
- Vice Chairman Bar Council Remuneration Committee 2006-2008
- Bar Council Remuneration Committee 2005 to 2010
- Bar Council Public Affairs Committee 2006-2007

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- Bar Council International Affairs Committee 2008-2010
- Bar Council 2004-2007.

## Publications:

- Joint author with Hugh Tomlinson QC:  
*The Law of Human Rights* (Oxford University Press, 3rd edn, forthcoming)- the standard practitioner textbook cited in House of Lords, Privy Council and Supreme Court over 45 times;
- *Civil Actions against the Police* (4th edn, Sweet & Maxwell forthcoming)
- *The Law of the European Convention on Human Rights: A Practitioner Text* (with Sir Nicholas Brazza, former President of the European Court of Human Rights (OUP, forthcoming)
- *Judicial Review Procedure* (2nd edn, Hart Publishing 1997);
- *Police Actions* (2nd edn, Hart Publishing 1997).

## Author

- *Are rights wrong* (Oxford University Press, forthcoming)
- *Practice and Procedure at Industrial Tribunals* (Legal Action, 1988).

## Regulatory information:

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