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Robin Tam QC

Year of Call: 1986
Year of Silk: 2006

Practice Areas

- Extradition
- Inquests
- Inquiries
- Public Law

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Awards



Experience

Robin Tam has a general common law practice which has become particularly specialised in the fields of judicial review and administrative law, especially in immigration and asylum and in the interface between public law and private law. Before taking silk in 2006, he had been on the panels of Junior Counsel to the Crown since 1994, including the A Panel.

Human rights have long been an important feature of his cases, particularly since the inception of the Human Rights Act. More recently, he has been prominently involved in litigation relating to control orders, “deportation with assurances” and the detention and deportation of foreign national offenders. These areas of work lead to him being routinely briefed to appear in the higher courts, including regular appearances in the Supreme Court. He has extensive experience of closed material procedures. His familiarity with the handling of sensitive information within litigation, and with the demands of both government departments and courts in that context, has also been deployed in other contexts, including high-profile inquests and inquiries.

Directories

“A safe, steady pair of hands. Calm and impartial”

“A gentle style which belies a sharp advocate. The way he present points is brilliant. He never gets rattled under pressure”

“very thorough, knowledgeable and an effective player”



“a very solid advocate”

“his manner with witnesses is very good and he’s a very deep thinker who understands strategy”

“He is extremely fair and sure-footed in court”

Chambers and Partners

“an excellent reputation in immigration and civil liberties judicial reviews”

“a brilliant advocate”

“strong experience in human rights related cases”

Legal 500

Memberships

Administrative Law Bar Association

Personal Injuries Bar Association

Cases

Costea v Secretary of State for the Home Department

[2021] EWHC 1685 (Admin)

24.06.2021

Barristers involved: Robin Tam QC William Irwin

The Court considered whether a Deportation Liability Notice (DLN) issued by the Secretary of State to an EEA national was a “measure” or a “decision” for the purposes of the Citizens’ Directive.

The Court held that a DLN was a “measure” within the meaning of Article 27 of the Directive. However the Court also held that the DLN was not a “decision” for the purposes of Article 30 of the Directive. Accordingly, there was no requirement from the Directive that the DLN should be communicated in such a way that the subject is able to comprehend its content and the implications for them.

The Claimant’s claim was, accordingly, dismissed.

EOG v Secretary of State for the Home Department

[2020] EWHC 3310 (Admin)

03.12.22

Barristers involved: Robin Tam QC William Irwin

Challenge to the lawfulness of the Secretary of State’s policy regarding grants of leave to remain to potential victims of human trafficking. Robin Tam QC and William Irwin represented the Secretary of State.

The Claimant was a New Zealand national who had been recognized as a potential victim of trafficking by the Secretary of State. She wished to be considered for leave to remain and said that the Secretary of State’s policy regarding grants of leave to victims of trafficking was defective because the policy provided for grants of leave only for confirmed victims of trafficking, not for potential victims of trafficking.

The court held that there was an unlawful lacuna in the Secretary of State’s policy and granted declaratory relief to the Claimant.

Jalloh, R (on the application of) v Secretary of State for the Home Department

[2020] UKSC 4

12.02.2020

Barristers involved: Robin Tam QC Emily Wilsdon

The Supreme Court considered whether an unlawful immigration curfew constituted the tort of false imprisonment, and whether the common law tort should be aligned with caselaw on article 5 of the ECHR.

In its judgment, given by Lady Hale, the Court decided that the essence of imprisonment is being made to stay in a particular place by another person. The methods which might be used to keep a person there include physical barriers, guards or threats of force or of legal process. In this case, the Secretary of State defined the place where the claimant was to stay between the hours of 11.00 pm and 7.00 am. Although it was physically possible for the claimant to leave, his compliance was enforced and not voluntary. He was wearing an electronic tag, and if he left during the curfew the monitoring company would then telephone him to find out where he was. He was warned in the clearest possible terms that breaking the curfew could lead to a £5,000 fine or imprisonment for up to six months or both. He was well aware that it could also lead to his being detained again under the 1971 Act. All of this was backed up by the full authority of the State, which was claiming to have the power to do this.

The Court also decided that it was possible for there to be imprisonment at common law without a deprivation of liberty under article 5, and the Court declined to align or restrict the classic understanding of imprisonment at common law to the very different and much more nuanced concept of deprivation of liberty under the ECHR.

The Court therefore upheld the decision of the Court of Appeal in *Jollah, R (On the Application Of) v The Secretary of State for the Home Department* [2018] EWCA Civ 1260.

Robin Tam QC, Mathew Gullick (of 3PB) and Emily Wilsdon represented the Secretary of State for the Home Department.

R (on the application of Lupepe) v Secretary of State for the Home Department

[2017] EWHC 2690 (Admin)

30.10.2017

Barristers involved: Robin Tam QC Emily Wilsdon

Following a three-day hearing in the Administrative Court, Lewis J found that a curfew imposed on a foreign national offender was unlawful as it was imposed pursuant to an unpublished policy about curfews, and because the Claimant was not afforded an opportunity to make representations prior to its imposition. The policy concerned the re-imposition of curfews that had had to be lifted following the Court of Appeal's decision in *R (Gedi) v Home Secretary* [2016] EWCA Civ 409, [2016] 4 WLR 93 (in which Robin Tam QC had also represented the Home Secretary).

However, the Court rejected a number of other arguments advanced by the Claimant. The Court's conclusions included the following:

There was no abuse of power or departure from an earlier decision of the First-tier Tribunal to grant bail to the Claimant (which had not specifically considered whether or not to impose a curfew).

The bail power contained in paragraph 22 of Schedule 2 of the Immigration Act 1971 is not limited to preventing absconding, but could be used to prevent offending.

The Secretary of State's use of 'nominal' re-detention for a very short period in order to grant bail including a curfew was not detention which was covered by Chapter 55 of the Enforcement Instructions and Guidance, and respected the FTT's decision that the Claimant should be released from detention on appropriate conditions.

As a matter of principle, a 7-hour curfew would not necessarily be more onerous than two periods of 2 hours each; and a substantive curfew of a number of hours each day would not necessarily be disproportionate or unjustified, intended as it is to ensure that the offender keeps regular structured hours and returns home on a daily basis, which can deter absconding and reduce the risk of re-offending.

Robin Tam QC and Emily Wilsdon, along with Mathew Gullick at 3PB, were instructed by the GLD on behalf of the Secretary of State.

The Judgment can be viewed [here](#).

R (Iqbal) v Home Secretary

[2016] UKSC 63

14.12.2016

Barristers involved: Robin Tam QC

The appellants, who all had extant leave to remain in the UK, applied in time for further leave to remain. They could have benefited from section 3C of the Immigration Act 1971 extending their leave until after their applications had been decided and any time for appealing had passed. The Supreme Court considered how this section operates when the application is procedurally invalid for a reason such as the non-payment of the required fee, or the payment of an insufficient fee, or a failure to comply with a request made during consideration of the application for the applicant to enrol biometric information.

NA (Pakistan) v Home Secretary

[2016] EWCA Civ 662, [2017] 1 WLR 207

29.06.2016

Barristers involved: Robin Tam QC

The claimants were all foreign criminals whose deportation was generally required by section 32 of the UK Borders Act 2007. The Court of Appeal considered the way in which the Immigration Rules in force before 28 July 2014 should be applied, and also the Immigration Rules in force from that date taken together with the new Part 5A of the Nationality, Immigration and Asylum Act 2002 (inserted by the Immigration Act 2014).

R (O) v Home Secretary

[2016] UKSC 19, [2016] 1 WLR 1717

27.04.2016

Barristers involved: Robin Tam QC

The appellant claimed that she had been unlawfully detained pending her deportation. A new medical report advancing a new diagnosis of her condition was submitted to the Home Secretary but was not properly dealt with. However, on judicial review she would at most receive only nominal damages. The Supreme Court agreed with the Court of Appeal that in those circumstances, it was right to refuse her permission to apply for judicial review.

R (Gedi) v Home Secretary

[2016] EWCA Civ 409, [2016] 4 WLR 93

17.05.2016

Barristers involved: Robin Tam QC

The Home Secretary wished to deport the appellant following the end of his criminal sentence. In the interim, she imposed restrictions on him under paragraph 2(5) of Schedule 3 to the Immigration Act 1971, including a curfew. Did that power allow the Home Secretary to impose a curfew?

B (Algeria) v Home Secretary (No 2)

[2015] EWCA Civ 445, [2016] QB 789

06.05.2015

Barristers involved: Robin Tam QC

The appellant had been granted bail during deportation proceedings, which had become so protracted (because of his own refusal to identify himself) that it would no longer have been lawful to detain him because of the limitation imposed by the case of Hardial Singh. Did this mean that there was no longer any power to grant bail?

The Litvinenko Inquiry

17/02/2016

Barristers involved: Robin Tam QC Andrew O'Connor QC
Inquiry into the death of Alexander Litvinenko, who died from Polonium poisoning in 2006.

Pham v Home Secretary

[2015] UKSC 19, [2015] 1 WLR 1591

25/03/2015

Barristers involved: Robin Tam QC

The Home Secretary deprived the appellant of his British citizenship, but the Vietnamese government – not acting in accordance with Vietnamese law – declined to accept that he was a Vietnamese national. Did this mean that he had been made stateless by the deprivation?

R (Francis) v Home Secretary

[2014] EWCA Civ 718, [2015] 1 WLR 567

23/05/2014

Barristers involved: Robin Tam QC

The Appellant was detained for deportation after a criminal court recommended that he be deported. Subsequent administrative detention reviews were legally flawed.

Where deportation flows from the Home Secretary's decision, a legally-flawed detention review could mean that the next period of detention was unlawful and amounted to false imprisonment. In a court-recommended case, did the statute authorise that detention so that the appellant was not entitled to damages for false imprisonment?

R (George) v Home Secretary

[2014] UKSC 28, [2014] 1 WLR 1831

14/05/2014

Barristers involved: Robin Tam QC

The Home Secretary signed a deportation order against the appellant, invalidating his previous leave to remain in the United Kingdom. He won his statutory appeal, and the Home Secretary later revoked the deportation order. Did that mean that his previous leave to remain automatically revived?

R (Elosta) v Commissioner of Police for the Metropolis

[2013] EWHC 3397 (Admin), [2014] 1 WLR 239

06/11/2013

Barristers involved: Robin Tam QC

The claimant was stopped at Heathrow Airport under Schedule 7 to the Terrorism Act 2000 and was allowed to telephone his solicitor. But the police officers would not wait for his solicitor to arrive at the airport before beginning to question him. It would be a criminal offence for him to refuse to answer those questions. Did the officers have the power to question him after the presence of the solicitor had been requested and before his arrival?

R (AA (Afghanistan)) v Home Secretary

[2013] UKSC 49, [2013] 1 WLR 2224

10/07/2013

Barristers involved: Robin Tam QC

The appellant claimed to be a child, but a local authority assessed him to be an adult. The Home Secretary acted on the basis of that assessment and detained him for removal. Later, a different local authority assessed him to be a child. Had the Home Secretary's duty under section 55 of the Borders, Citizenship and Immigration Act 2009 regarding the need to safeguard and promote the welfare of children been breached when he was detained, so as to make his detention unlawful?

Bank Mellat v HM Treasury (No 2)

[2013] UKSC 38, [2013] UKSC 39, [2014] AC 700

19/06/2013

Barristers involved: Robin Tam QC

A financial sanctions measure against the appellant bank was examined by the High Court using procedures including a closed material procedure. When the appeal from that decision reached the Supreme Court, did the Supreme Court have the power to sit in closed session to examine the closed judgment and closed evidence?

B (Algeria) v Home Secretary

[2013] UKSC 4, [2013] 1 WLR 435

30/01/2013

Barristers involved: Robin Tam QC

The appellant was being deported on national security grounds, but (in defiance of an order of the Special Immigration Appeals Commission) had persistently refused to disclose his true identity, thwarting the Commission's ability to properly determine his appeal. He was sentenced to four months' imprisonment, which was upheld on appeal by the Court of Appeal. Was the Court of Appeal's approach to that appeal erroneous?

R (BB (Algeria)) v SIAC (No 2)

[2012] EWCA Civ 1499, [2013] 1 WLR 1568

19/11/2012

Barristers involved: Robin Tam QC

The appellant was being deported on national security grounds but was granted bail subject to a curfew. The national security case against him had not been disclosed to him, even by way of a gist. Was he entitled to such disclosure under Article 6 of the ECHR?

XX (Ethiopia) v Home Secretary

[2012] EWCA Civ 742, [2013] QB 656

15/06/2012

Barristers involved: Robin Tam QC

The appellant was being deported on national security grounds, but his appeal was dismissed by the Special Immigration Appeals Commission. Should SIAC have excluded any evidence which may have resulted from the alleged attendance by Security Service officers at secret detention facilities abroad?

Home Secretary v CB

[2012] EWCA Civ 418, [2012] 1 WLR 3259

03/04/2012

Barristers involved: Robin Tam QC

The Home Secretary made control orders against two Pakistani nationals. One voluntarily returned to Pakistan and the other was extradited to the United States. The control orders ceased to have practical effect and the High Court accordingly stayed the control order proceedings. Was the court entitled to do that when neither individual had exercised their right under the statute to request the discontinuance of the proceedings?

IR (Sri Lanka) v Home Secretary
[2011] EWCA Civ 704, [2012] 1 WLR 232
21/06/2011

Barristers involved: Robin Tam QC

The appellants had either been excluded or were being deported from the United Kingdom. They appealed to the Special Immigration Appeals Commission, which adopted a closed material procedure in hearing their cases. Did the procedure breach their rights under Article 8 of the ECHR?

Publications

National Security Law textbook
18/03/2021

Authors: Robin Tam QC Andrew O'Connor QC

A practitioners' textbook which provides detailed coverage of UK national security law in one place for the first time. The book explains the concept of national security, the respective constitutional functions of the various branches of government, and the law relating to the security and intelligence agencies. It describes executive measures that are deployed to disrupt threats to national security and civil proceedings concerning them. It also deals with the criminal law, and the other contexts in which national security issues can arise. It will be an invaluable guide to anyone instructed in cases in which national security issues are involved.

Asylum and Human Rights Appeals Handbook
01/03/2008

Authors: Robin Tam QC Anna Kotzeva, Lucy Murray and Ian Burnett QC

News

National Security Law textbook published
18/03/2021

Barristers involved: Robin Tam QC Andrew O'Connor QC

Two members of Temple Gardens Chambers have contributed to this new practitioners' textbook, which provides detailed coverage of UK national security law in one place for the first time.

The book explains the concept of national security, the respective constitutional functions of the various branches of government, and the law relating to the security and intelligence agencies. It describes executive measures that are deployed to disrupt threats to national security and civil proceedings concerning them. It also deals with the criminal law, and the other contexts in which national security issues can arise. It will be an invaluable guide to anyone instructed in cases in which national security issues are involved.

Oxford University Press has kindly allowed us to share the discount code ALAUTHC4 for 30% off the list price if ordered from its website, which can be reached using the link below. The book's ISBN is 9780192896483.

You can view the publication at <https://global.oup.com/academic/product/national-security-9780192896483?cc=gb&lang=en&>

High Court allows appeals against Bulgarian Extradition requests
26/02/2021

Barristers involved: Robin Tam QC Saoirse Townshend Daniel Sternberg

Three members of Temple Garden Chambers extradition team have successfully obtained the discharge of their clients on human rights grounds.

In a judgment handed down on 26 February 2021 the High Court has allowed the appeals of Richard Chechev and Rayko Vangelov represented by Robin Tam QC, leading Saoirse Townshend (Chechev) and Robin Tam QC leading Daniel Sternberg (Vangelov).

The High Court held that the assurances provided by the Bulgarian authorities regarding prison conditions were insufficient to displace the real risk of a breach of article 3 ECHR in Mr. Vangelov's case and allowed his appeal. In Mr. Chechev's case the High Court allowed his appeal on article 8 ECHR grounds.

You can view the publication at <https://www.bailii.org/ew/cases/EWHC/Admin/2021/427.html>

Robin Tam QC and Emily Wilsdon appeared in Supreme Court case on false imprisonment

20/02/2020

Barristers involved: Robin Tam QC Emily Wilsdon

The Supreme Court considered whether an unlawful immigration curfew constituted the tort of false imprisonment, and whether the common law tort should be aligned with caselaw on article 5 of the ECHR.

In its judgment, given by Lady Hale, the Court decided that the essence of imprisonment is being made to stay in a particular place by another person. The methods which might be used to keep a person there include physical barriers, guards or threats of force or of legal process. In this case, the Secretary of State defined the place where the claimant was to stay between the hours of 11.00 pm and 7.00 am. Although it was physically possible for the claimant to leave, his compliance was enforced and not voluntary. He was wearing an electronic tag, and if he left during the curfew the monitoring company would then telephone him to find out where he was. He was warned in the clearest possible terms that breaking the curfew could lead to a £5,000 fine or imprisonment for up to six months or both. He was well aware that it could also lead to his being detained again under the 1971 Act. All of this was backed up by the full authority of the State, which was claiming to have the power to do this.

The Court also decided that it was possible for there to be imprisonment at common law without a deprivation of liberty under article 5, and the Court declined to align or restrict the classic understanding of imprisonment at common law to the very different and much more nuanced concept of deprivation of liberty under the ECHR.

You can view the publication at <https://www.supremecourt.uk/cases/docs/uksc-2018-0137-judgment.pdf>

Robin Tam QC and Emily Wilsdon represented the Home Secretary in a challenge to a curfew

09/11/2017

Barristers involved: Robin Tam QC Emily Wilsdon

Following a three-day hearing in the Administrative Court, Lewis J found that a curfew imposed on a foreign national offender was unlawful as it was imposed pursuant to an unpublished policy about curfews, and because the Claimant was not afforded an opportunity to make representations prior to its imposition. The policy concerned the re-imposition of curfews that had had to be lifted following the Court of Appeal's decision in *R (Gedi) v Home Secretary* [2016] EWCA Civ 409, [2016] 4 WLR 93 (in which Robin Tam QC had also represented the Home Secretary).

However, the Court rejected a number of other arguments advanced by the Claimant. The Court's conclusions included the following:

There was no abuse of power or departure from an earlier decision of the First-tier Tribunal to grant bail to the Claimant (which had not specifically considered whether or not to impose a curfew).

The bail power contained in paragraph 22 of Schedule 2 of the Immigration Act 1971 is not limited to preventing absconding, but could be used to prevent offending.

The Secretary of State's use of 'nominal' re-detention for a very short period in order to grant bail including a curfew was not detention which was covered by Chapter 55 of the Enforcement Instructions and Guidance, and respected the FTT's decision that the Claimant should be released from detention on appropriate conditions.

As a matter of principle, a 7-hour curfew would not necessarily be more onerous than two periods of 2 hours each; and a substantive curfew of a number of hours each day would not necessarily be disproportionate or unjustified, intended as it is to

ensure that the offender keeps regular structured hours and returns home on a daily basis, which can deter absconding and reduce the risk of re-offending.

Judgment was handed down on Monday 30 October 2017.

Robin Tam QC and Emily Wilsdon, along with Mathew Gullick at 3PB, were instructed by the GLD on behalf of the Secretary of State.

Supreme Court judgment on statutorily-extended leave

21/12/2016

Barristers involved: Robin Tam QC

Robin Tam QC (together with Samantha Broadfoot of Landmark Chambers) represented the Secretary of State to resist an appeal by three individuals who claimed that their leave to enter or remain in the United Kingdom had been extended by the operation of section 3C of the Immigration Act 1971, which is designed to continue existing leave while the Home Secretary considers an application for an extension and during any statutory appeal against an adverse decision.

Each appellant had made an application to extend their leave before the expiry of their existing leave. However, each application was invalid for a procedural reason. One paid the wrong application fee; one gave payment details but the Home Secretary was unable to collect payment; and one did not provide her biometric information when required to do so. Consequently each of those applications was rejected as invalid, the Home Secretary considered that section 3C did not operate to extend leave and dealt with the appellants accordingly. The appellants argued that the statutory provision should be interpreted so that statutorily-extended leave was triggered by any application, whether valid or invalid.

On 14 December 2016, the Supreme Court gave judgment dismissing the appeals ([2016] UKSC 63). Given the provisions of the legislation regarding fees, non-payment meant that the application was not validly made and section 3C leave was not triggered. And although the obligation to provide biometric information did not arise until the Home Secretary required it, the legislative provisions allowed the Home Secretary to treat the application as invalidating the application from the time of the decision rejecting it as invalid.

Each appellant had relied on the operation of section 3C leave for the benefit that it would have conferred in relation to a second application later made by them. However, given the conclusion that the earlier application either was invalid or had been invalidated by the time of the second application, the consequence was that the appellant was not entitled to the claimed benefit and the Home Secretary had dealt correctly with the second application.

Accordingly, the appeals failed.

New Head of Chambers for Temple Garden Chambers

01/06/2016

Barristers involved: Keith Morton QC Robin Tam QC

Temple Garden Chambers very much looks forward to continued growth and success under his leadership.

The members of Temple Garden Chambers express their sincere gratitude to Robin Tam QC for his leadership over the last four years. Robin Tam QC remains in full time practice.

Supreme Court dismisses unlawful detention appeal

27/04/2016

Barristers involved: Robin Tam QC

Robin Tam QC represented the Home Secretary when successfully resisting an appeal to the Supreme Court by an individual who claimed that she had been unlawfully detained pending her deportation. The claimant, a Nigerian woman known as "O", had long suffered from mental ill-health but was nevertheless detained for a long period. Her present claim concerned the last part of the period for which she was detained, up to her release on bail by the Tribunal, and in particular the time after a new medical report

was obtained on her behalf which advanced a new diagnosis of her condition.

In the High Court and the Court of Appeal, she was refused permission to apply for judicial review. The Court of Appeal considered that reviews of her detention after the new medical report were flawed because they failed to deal properly with the report, but it would be disproportionate to grant her permission to apply for judicial review on that basis because she would at most receive only nominal damages.

The Supreme Court has today dismissed her appeal ([2016] UKSC 19). The Court agreed that the detention reviews were procedurally flawed for failing to deal properly with the new medical report. But even if the report had been properly responded to by the Secretary of State, it was unrealistic to consider that she would have been released any earlier than she was. If permission to apply for judicial review had been granted, she would only have obtained a declaration that her detention was unlawful and an award of nominal damages (conventionally fixed at £1). The lower courts were therefore entitled to refuse her permission to apply for judicial review.

A secondary issue was the correctness of the Court of Appeal's earlier decision in *R (Francis) v Home Secretary* [2014] EWCA Civ 718, [2015] 1 WLR 567. This decision would, if followed, have meant that O's detention was not unlawful despite the flawed detention reviews because the authority for detention was provided by the statute rather than by the Secretary of State's flawed decisions. However, the Supreme Court considered that *Francis* was wrongly decided, and so the appeal could not be dismissed on the basis of this further reason.
