temple garden chambers

Robin Tam KC

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Robin Tam KC's practice is 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, Robin 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. More recently, he has been prominently involved in litigation relating to control orders, "deportation with assurances", the detention and deportation of foreign national offenders, and administrative procedures concerning victims of modern slavery and human trafficking. His expertise has also been relevant in the similar context of extradition.

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.

Expertise

Public Law

Robin is widely recognised as a leader in the field of immigration and asylum. Landmark cases in which he has appeared at the highest level include *Lumba* on the relationship between public law error and the private law tort of false imprisonment; other Supreme Court cases on this topic include *Kambadzi* and *Jalloh*. In the field of national security-related immigration, his cases include *Rehman* and *RB (Algeria)*. Away from immigration, he has also appeared in cases such as *Adams*, concerning the test for the payment of compensation for miscarriages of justice. His practice also includes regular appearances before the Court of Appeal as well as the High Court and specialist tribunals such as the Special Immigration Appeals Commission.

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Notable Public Law cases

Cases R (C1) v Home Secretary [2022] EWCA Civ 30

The Secretary of State cancelled C1's indefinite leave to remain after he had departed the United Kingdom, using the power in Article 13(7) of the Immigration (Leave to Enter and Remain) Order 2000, which provides for leave that does not lapse on departure. C1 argued that that power allows only the cancellation of limited leave and does not extend to indefinite leave. The Court of Appeal rejected that argument.

Kaitey v Secretary of State for the Home Department [2021] EWCA Civ 1875

Robin Tam QC and Emily Wilsdon appeared for the Home Secretary when successfully resisting an appeal, potentially affecting a large number of people, about whether the Secretary of State has the power to place a person on bail under para. 1(2) of Sch. 10 to the Immigration Act 2016 in circumstances in which it would be unlawful actually to exercise a power to detain them. In the central part of the appeal, the Court of Appeal considered the meaning of the phrase 'liable to detention' in the legislation, and whether the concept of 'immigration bail' in the new scheme enacted in Sch. 10 to the 2016 Act was related to historical concepts of bail and to the concept of bail in the predecessor legislation. The Appellant argued that the phrase ought to be read as 'liable to lawful detention', and that as he could no longer lawfully be detained in immigration detention, and had thus been released, he could not be placed on immigration bail. Lord Justice Singh, with whom Lord Justice Nugee and Sir Stephen Richards agreed, found that the natural meaning of the phrase 'liable to detention' refers to a person who can in principle be detained: in other words, there exists a legal power to detain them. The phrase does not mean 'liable to lawful detention'. The Court's interpretation of the phrase in the 2016 Act was the same as the way in which the same phrase in the predecessor legislation had been interpreted by the House of Lords in Khadir. The legislative history pointed strongly towards this interpretation, as did both the history and the wording of the 2016 Act itself. Historical concepts of bail were not relevant: the 2016 Act contains the new concept of 'immigration bail', and the transitional provisions demonstrate that this covered, for example, those previously on temporary admission or a restriction order. The Court also set out the approach required by s. 3 of the Human Rights Act 1998, and found that because the ordinary interpretation of the 2016 Act is not incompatible with Convention rights, there is therefore no warrant for applying s. 3 HRA. In addition, Article 5 ECHR was not relevant to the interpretation of the phrase as the Appellant's bail conditions did not amount either to an imprisonment or a deprivation of liberty; and on the ordinary interpretation of the phrase there would still be remedies under the HRA concerning any breach of Convention rights, if the facts of a particular case justify it. Finally, the Court found that there was no basis to import the Hardial Singh principles into the context of the grant of bail, as argued by the Appellant and the Intervener (Bail for Immigration Detainees) – a person on bail is not in detention, he is at liberty, although there may be conditions attached to his bail. The Court also observed that grounds of appeal are not the same thing as submissions applying for permission to appeal (which should be set out in a skeleton argument in support of those grounds), and it is important that grounds are clearly and concisely formulated so that everyone concerned knows exactly what is within the scope of the appeal.

R (TN (Vietnam)) v Home Secretary [2021] UKSC 41

The Supreme Court upheld a Court of Appeal decision that an asylum appeal determination is not

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automatically a nullity even if the applicable fast-track procedure was systemically flawed. An unsuccessful asylum appellant must show unfairness in the circumstances of their own case in order to have the determination set aside. The claimant's asylum appeal had been determined under fast-track rules that the High Court decided were systemically flawed. However, the claimant could not show unfairness, so her claim to have the determination quashed failed. Robin Tam QC and Natasha Barnes (of 1COR) represented the Home Secretary in resisting the claimant's appeal to the Supreme Court.

Costea v Secretary of State for the Home Department [2021] EWHC 1685 (Admin)

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)

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

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 page 4 of 12 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

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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)

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

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

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

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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

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

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?

Pham v Home Secretary [2015] UKSC 19, [2015] 1 WLR 1591

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?

Inquests & Inquiries

Robin has been involved in some of the highest-profile inquests and inquiries of recent years. He was briefed on behalf of the Government in the Hutton Inquiry into the death of Dr David Kelly, and also appeared for the Foreign Office in the inquest into the deaths of Diana, Princess of Wales and Dodi Fayed. He was also leading counsel to the inquest into the death of Alexander Litvinenko, who was fatally poisoned with polonium in London, and the inquest later became the Litvinenko Inquiry. He has also appeared in a number of inquests into deaths in prison, and was involved in the Nimrod Review concerning the loss of an RAF aircraft on a routine mission in Afghanistan in 2006.

Notable Inquests & Inquiries cases

The Litvinenko Inquiry

Inquiry into the death of Alexander Litvinenko, who died from Polonium poisoning in 2006.

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Immigration

Notable Immigration cases

R (DN (Rwanda)) v Home Secretary [2020] UKSC 7, [2020] AC 698

The Supreme Court decided that the giving of notice of a decision to deport an individual, the making of the deportation order and the detention of the individual under immigration powers for the express purpose of facilitating the deportation were essential steps in the same transaction, so that detention would inevitably be unlawful if founded upon an unlawful decision to deport.

R (Hemmati) v Home Secretary [2019] UKSC 56, [2021] AC 143

The Supreme Court decided that the Secretary of State's policy in relation to detention pending removal under the "Dublin III" Regulation did not establish objective criteria for the assessment of whether a person might abscond, its contents did not constitute a framework of certain predetermined limits, and it did not set out the limits of the flexibility of the relevant authorities in assessing the circumstances of each case in a manner which was binding and known in advance, and the policy therefore did not satisfy the requirements of the Regulation concerning detention pending removal; that the decision to detain a person lay outside the detention power conferred by domestic legislation and was unlawful; and that although a person might only be entitled to nominal damages if it was established that their detention could have been effected lawfully under the existing legal and policy framework, it was no answer to a claim for substantial damages for unlawful imprisonment that the detention would have been lawful had the law been different.

R (J1) v SIAC [2018] EWHC 3193 (Admin), [2019] 1 WLR 2594

The High Court decided that an appeal against a revocation of indefinite leave to remain was to be decided by reference to facts in existence at the time of the decision because it contained no forward-looking assessment; that the revocation of indefinite leave to remain did not in itself engage Article 8 ECHR; and that a person could be "liable to deportation" and therefore liable to have their indefinite leave to remain revoked even if there was then no prospect that they could actually be deported.

Pham v Home Secretary [2018] EWCA Civ 2064, [2019] 1 WLR 2070

The Court of Appeal decided that the Special Immigration Appeals Commission could exercise its power to strike out an appeal not only when the notice of appeal did not plead a recognisable point of law but also by giving summary judgment after considering the incontrovertible evidence; and that such summary judgment could be appropriate when the person does not pose a risk of current harm, if the person has in the past fundamentally repudiated the obligations which they owe as a citizen and the Secretary of State considers that deprivation of citizenship is conducive to the public good.

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R (K) v Home Secretary [2018] EWHC 1834 (Admin), [2018] 1 WLR 6000

The High Court decided that where a child was not automatically a British citizen from birth because discriminatory provisions of nationality legislation required that the child's "father" was taken to be the man to whom the child's mother was married rather than the child's British biological father, the existence of a scheme for remedying the effects of the legislation through later registration of the child as a British citizen could in principle amount to justification, but the existing scheme was inadequate because it did not confer a right to be registered but only a right to ask the Secretary of State to exercise a discretion to grant nationality.

Youssef v Home Secretary [2018] EWCA Civ 933, [2019] QB 445

The Court of Appeal decided that when considering whether a person was guilty of acts contrary to the purposes and principles of the United Nations, with the effect that Article 1F(c) of the Refugee Convention excludes the person from the benefits of the Convention, it was not necessary to prove that the person had committed a crime contrary to international law.

R (MS (India)) v Home Secretary [2017] EWCA Civ 1190, [2018] 1 WLR 389

The Court of Appeal decided that the Secretary of State's policy on restricted leave to remain, which could be granted to those who were a danger to the UK but could not be removed from the UK, did not have the character of Immigration Rules that had to be laid before Parliament; that the short periods of leave that would be granted and the restrictions that could be imposed under the policy were not inherently contrary to the rule of law and were proportionate to the legitimate aims of the policy; that the policy provided that indefinite leave to remain may be granted only in a situation involving a departure from the general rule which was only to be justified in compelling circumstances, which was for the Secretary of State to assess subject to limitations on the court's role where the assessment of the public interest is concerned; and that no norm was to imported into the policy of indefinite leave to remain after ten years.

Extradition & Interpol

Notable Extradition & Interpol cases

Chechev and Vangelov v Bulgaria [2021] EWHC 427 (Admin)

The High Court accepted further assurances from Bulgaria, obtained after an earlier adjournment for that purpose, concerning prison conditions in general. However, in one appellant's case, the answers given by Bulgaria did not address two of the court's questions, and the real risk of a breach of the appellant's rights under Article 3 ECHR, which it was common ground existed in the absence of adequate assurances, had not been dispelled in the appellant's case. In the other appellant's case, the length of time that he had already served in the UK meant that he would serve only a very short sentence if returned to Bulgaria, and the extradition would therefore be a disproportionate interference with the appellant's Article 8 ECHR rights.

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Duarte v Portugal [2018] EWHC 2995 (Admin)

The High Court decided that although there were concerns regarding conditions in certain Portuguese prisons, assurances given by Portugal were sufficient to exclude a real risk of a breach of the appellant's rights under Article 3 ECHR, particularly as there was no evidence of Portugal ever breaching or disregarding such an assurance.

Memberships

- Administrative Law Bar Association
- Defence Extradition Lawyers' Forum
- Personal Injuries Bar Association
- South Eastern Circuit

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