

Fred Mackintosh KC (SCOT)

Call: 2000 (Scotland) 2022 (England & Wales)

Silk (Scotland): 2019

Fred is recognised as a Leading Silk (Tier 1) for Crime & Regulatory work in Scotland in the latest edition of the Legal 500: “An excellent advocate, who has the ability to marshal large quantities of information and identify the relevant issues.” Legal 500, 2026 “a silk who demonstrates meticulous professionalism” Legal 500, 2025

PRACTICE AREAS

- Extradition
- Crime
- Public Law and Judicial Review

Fred is one of Scotland’s leading extradition counsel and joined Great James Street in 2022 to extend his practice to London and requested persons arrested in England and Wales. The same legislative scheme applies to extradition cases in both Scotland and England and Wales.

Fred specialises in criminal, extradition, public law and Judicial Review. He regularly appears in complex cases before the High Court of Justiciary Appeals, the Sheriff Appeal Court in Scotland and the Royal Courts of Justice in London.

Fred called to the Scottish bar in 2000 and took silk in 2019. He has a wealth of experience and appears in the most difficult and complex cases. In 2022, Fred was called to the Bar in England & Wales and accepts instructions both leading and as junior alone in all areas of extradition law, representing clients in complex proceedings from Westminster magistrates’ court to the High Court.

In 2023 he was appointed as Counsel to the Inquiry to the Scottish Hospitals Inquiry investigating the planning, design, construction, commissioning and maintenance of the Queen Elizabeth University Hospital Campus, Glasgow.

In Scotland, outside of the High Court of Justiciary Appeal Court, Fred has a busy first instance extradition practice and is also regularly instructed in challenging appeals by Stated Case, Sentence Appeals and Bills of Suspension before the Sheriff Appeal Court. In the field of judicial review in the Court of Session, he has significant experience of challenging decisions of the Scottish Ministers, the Parole Board for Scotland, the Lord Advocate, Police Scotland, the United Kingdom Government, and Scottish universities.

Alongside his practice, from 2010 to 2017, Fred taught Criminal Practice and Procedure and Advocacy at the Edinburgh University School of Law as a Senior Teaching Fellow in the Scottish equivalent to the Legal Practice Course. From 2013 to 2017 Fred was the Law Society of Scotland examiner for criminal and civil procedure and a member of the society's board of examiners. From 2013 to 2018 Fred was a Fee-Paid Judge of the First Tier Tribunal (Social Entitlement Chamber) hearing benefit appeals.

Notable Cases

Extradition:

Craig v Lord Advocate: Successfully obtained the discharge of Mr Craig who had been the appellant in the *Craig v HM Advocate* (for the Government of the United States of America) and *Another* [2022] UKSC 6 (see below) but was then subject to a renewed attempt at extradition. The decision of the Sheriff to discharge was not published but turned on there being a real risk that Mr Craig would be detained in California in physical conditions that are incompatible with his Article 3 ECHR rights.

Tweedie or Morrow v HM Advocate [2023] HCJAC 29; 2023 SLT 1065; 2023 SCCR 253: Part 2 extradition appeal in respect of a request to extradite to the United States on federal fraud charges. Conducted both first instance hearing and appeal. Primary bars against extradition raised were Article 3 - in respect of the risk of rape and sexual abuse to female prisoners from guards and staff in US federal prisoners and Article 6 - whether the US system of taking account of un-tried conduct in sentencing was a breach of the right to a fair trial. Appeal refused. Application for leave to appeal to the UK Supreme Court refused.

Craig v HM Advocate (for the Government of the United States of America) and Another [2022] UKSC 6 - Successful appeal to the UK Supreme Court against decision of the High Court of Justiciary in respect of an extradition request by the Government of the United States of America. The issue was what was the effect of the failure of the UK Government to comply with the declarator of *Lord Malcolm in Craig v Advocate General* [2018] CSOH 117; 2019 S.C. 230; 2019 SLT 1 when it was found to have acted unlawfully by failing to commence new forum bar provisions in the Extradition Act 2003 into Scotland whilst doing so in the rest of the UK. The Supreme Court decided that as a consequence of this continuing failure to comply with the law the acts of the Lord Advocate in conducting the extradition proceedings, and the act of the Scottish Ministers in making the extradition order, were incompatible with the appellant's Convention rights, and were therefore ultra vires by virtue of section 57(2) of the Scotland Act and accordingly void and invalid. Co-counsel with Aidan O'Neil KC.

Lord Advocate on behalf of the Republic of Poland v RM [2021] SC EDIN 63 - Obtained the discharge of a requested person sought by the District Court in Wrocław, Poland on the grounds that extradition would be incompatible with the Article 8 right to respect for private and family life of the requested person, his wife and children. This case was also the second Scottish test case in respect of the effect of changes to the Polish Judicial System and the right to a fair trial in Poland and involved making arguments and leading expert evidence on broadly the same basis as its English equivalent *Wozniak v Poland* [2021] EWHC 2557 (Admin).

Lord Advocate on behalf of the Government of the United States of America v A [2021] Edinburgh Sheriff Court (unreported) – Fred obtained the discharge of a requested person sought by the United States of

America on the grounds that expert evidence led on his behalf gave rise to substantial grounds for believing that prisoners in the Texan state prison system face a real risk of being subjected to treatment contrary to Article 3. The requesting state declined to give an assurance and the requested person was discharged. The case was later reported in the American media.

Lord Advocate on behalf of the Office of the Prosecutor General of the Italian Republic, Court of Trieste v Daja [2021] HCJAC 31; 2021 SLT 87 - Appeared for the respondent in an appeal by the Lord Advocate under section 28 of the Extradition Act 2003 in respect of the correct approach to be taken by the first instance Sheriff to incomplete information about retrial rights on the face of the European Arrest Warrant.

Andrew Brown v The Parole Board of Scotland [2021] CSIH 20 - Successful Inner House appeal against the refusal to grant permission for a judicial review of a decision by the Parole Board. The issues turned on the extent to which the Parole Board should apply the principle 'anxious scrutiny' to the question of whether to order the release of a life sentence prisoner who had served many years over his punishment part.

KB v the Lord Advocate [2019] SC EDIN 45: Successful defence of a Scottish resident subject to an extradition request by the Government of the United States of America. The requested person was discharged. This result was reported in the Times on 27 June 2019 with Fred as 'Lawyer of the Week'. The requested person was later prosecuted in Scotland.

Crime & Regulatory

Daly & Keir v HM Advocate [2025] UKSC 38; [2025] 1 WLR 5360; 2026 SC (UKSC) 1; 2025 SLT 1253; 2026 SCCR 18: Initially instructed to appeal the convictions of both Daly and Keir. Fred took the point that the jurisprudence of the High Court of Justiciary on the operation of the 'rape shield' provisions in section 274 and 275 of the Criminal Procedure (Scotland) Act 1995 and recent developments in the common law of evidence were incompatible with Article 6 ECHR fair trial rights for accused persons. Leave to appeal was initially refused in Scotland but granted by the UK Supreme Court. Fred argued Keir's case before the Supreme Court. In a landmark decision the Supreme Court decided that the common law of Scotland in relation to the admission of evidence in trials for sexual offences, as currently applied, was liable to result in violations of the rights of the accused under Article 6 ECHR.

Lord Advocate's References, [2025] HCJAC 2; 2025 SLT. 101 and [2025] HCJAC 12; 2025 SLT. 221: Instructed to represent two young people subject to summary prosecution in response to an attempt by the Crown to argue that the duties under section 6(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 did not apply to it. The High Court of Justiciary disagreed also decided that the prosecution of those under 18 in a manner compatible with the UNCRC would be achieved by trials behind closed doors with controlled success for the press or other specially authorised persons.

HM Advocate v MacLennan [2024] HCJAC 26; [2025] JC 1; 2024 SCCR 277: Successfully opposed a Crown appeal against a sheriff's decision to discharge an indictment against a solicitor eight years after the allegations first came to the attention of the Law Society of Scotland and where the Crown conceded at the appeal hearing that there had been a breach the reasonable time guarantee in terms of Article 6 of the Convention. The court concluded that no lesser remedy other than sustaining a plea in bar of trial would be effective, just and proportionate to provide an adequate remedy to the respondent for the breach of the reasonable time requirement.

Scottish Post Office (Horizon) Conviction Appeals (reported as Quarm and others v HM Advocate [2024] HCJAC 15; 2024 SLT 473; 2024 SCCR 221): Acted for the lead appellant of the six initial cases referred to the High Court of Justiciary in respect of convictions in Scotland of Sub-postmasters convicted following investigations by Post Office Limited using data drawn from the Horizon computer system. The appeals involved a tortuous disclosure process by which material was gradually disclosed by Post Office Limited to the Crown and an evolving understanding of the extent and scope of the miscarriage of justice. In due course the Crown chose not to oppose any of the appeals and the Court quashed the convictions.

Quyen Van Phan v HMA 2018 JC 195: First and only reference of an EU law compatibility issue to the High Court of Justiciary. Involved application of an EU Directive on human trafficking to Scots criminal law.

Administrative & Public Law

Andrew Brown v Scottish Ministers [2022] CSIH 48; 2023 SC 27; 2022 SLT 1206: Successful substantive reclaiming motion on Article 14 discrimination grounds in respect of the Scottish Prison Service policy that set a different critical date for the progression of prisoners subject to Orders for Lifelong Restriction and life sentenced prisoners.

Thomas O'Leary v Parole Board for Scotland [2022] CSOH 13; 2022 SLT 623: Successful judicial review in respect of decisions by the Parole Board that where the failure to appoint Special Counsel where intelligence information could not be disclosed to a prisoner gave rise to procedural unfairness. Prompted significant change to Parole Board policy and procedures in respect of the use of Special Counsel.

Andrew Brown v The Parole Board of Scotland [2021] CSIH 20; 2021 SLT 687: Successful Inner House reclaiming motion against the refusal to grant permission for a judicial review of a decision by the Parole Board. The issues turned on the extent to which the Parole Board should apply the principle 'anxious scrutiny' to the question of whether to order the release of a life sentence prisoner who had served many years over his punishment part.

Thomson v Advocate General [2018] CSOH 118 and Craig v Advocate General [2018] CSOH 117; 2019 SC 230; 2019 SLT 1: Judicial Review of the UK Government unlawfully failure to commence new forum bar provisions in the Extradition Act 2003 into Scotland whilst doing so in the rest of the UK. No appeal by UK Government. Junior to Aidan O'Neil QC.

Ross v LA 2016 SC 502: Application of Article 8 of the European Convention of Human Rights and the principle of legality to the guidance issued by the Lord Advocate in respect of assisted suicide and "the right to die". Junior to Aidan O'Neil QC.

Appointments

- External Examiner for Criminal Litigation and Advanced Criminal Litigation at the University of Glasgow Diploma in Professional Legal Practice.

Memberships

- Scottish Criminal Bar Association
- Member of the Defence Extradition Lawyers' Forum
- Justice

Articles & Commentary

- [Criminalising Actors and behaviour with no public element: Practical Problems with the Hate Crime & Public Order \(Scotland\) Bill](#)
- [Coronavirus Legislation and the Devolution Settlement](#)
- [Being rude and offensive if not a crime, yet...](#)