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Area of expertise

Arbitration

Civil & Commercial

Employment Law

Planning & Environmental

Public Law

Regulatory & Competition

## Profile

Nicola Strachan is a general commercial law practitioner who has a developing practice in the specialist fields of commercial litigation and arbitration, public law and planning (including compulsory purchase).

Nicola has appeared in a number of reported judgments and is regularly instructed in cases where she acts as sole Counsel or as a Junior to Leading Counsel. She has the reputation of being a strong and tenacious advocate and of having commercial acumen and good judgement. Highly regarded by professional and lay clients, she has developed a strong client base.

## Arbitration

Nicola is the acting Registrar for the new London Chamber of Arbitration (LCA). It is anticipated that the LCA will be a major force for dispute resolution in London and overseas and the reputation of London as an arbitral seat is likely to make the LCA a focal point in the arbitration world. She has assisted in drafting the Rules of Arbitration and model clauses for inclusion in contracts.

## Commercial and Regulatory

Nicola has worked on a broad spectrum of commercial matters; drafting pleadings, skeleton arguments, Advices and Opinions as well as regularly appearing in court. She represented Grosse Investments as Junior Counsel in the St James Edinburgh Compulsory Purchase Order which resulted in a major Public Inquiry held in Edinburgh in 2015. This was one of the largest compulsory purchase order cases ever held in the UK and concerned the acquisition of land and interests for the purpose of redevelopment of the St James Retail Quarter in the heart of Edinburgh. It was a scheme encompassing an £850 million investment project. Her clients were the feuholders (freeholders) of the John Lewis department store. The case involved a multiplicity of legal and factual issues. These included a consideration of section 189 of the Town and Country Planning (Scotland) Act 1990 and in particular the meaning of land which is "required" for the development, the meaning of "best price" and "best terms" and a consideration of the statutory criteria which had to be taken into account in deciding whether to confirm the Order. It was the feuholder's case that the Order had been made without proper authorisation by the Council, was ultra vires section 189, that best price and value had not been obtained from the Developer and that the Council had acted for an unauthorised purpose and had taken into account irrelevant considerations.

Nicola has provided tax advice as to whether a university college was eligible for VAT zero rating in relation to major alterations to a Grade II listed residential building. She has also advised on whether a builder was acting as the principal in relation to the performance significant contractual works and consequently whether he should have been registered for VAT.

She has been instructed as Junior Counsel by Powys County Council. Powys recently replaced the Office of Fair Trading and is now the Lead Enforcement Authority charged with exercising and discharging regulatory powers and duties throughout the UK in relation to estate agency work pursuant to the Estate Agents Act 1979. Under the Act, Powys proposed to make a prohibition order against two estate agents who had been convicted in the largest ever case of insider dealing in the UK. The affected parties gave notice that they wished to make representations orally to the Enforcement Authority. Powys proposed that oral representations of the Claimants would be heard by the investigator and that the adjudicator would be given an audio recording and transcript of the oral exchange. The issues in the case centred on the right to a fair hearing and natural justice.

Currently advising on a high value insurance claim against American Express and AXA on issues relating to repatriation, financial loss, and personal injury.

Nicola is experienced in licensing matters including but not limited to alcohol and entertainment, gambling and taxis. She is regularly instructed by Local Authorities and private landlords in relation to breaches of HMO licences. She frequently appears on appeals to the Magistrates' and Crown Courts and in the High Court by way of Judicial Review proceedings.

## Public

Nicola's public law experience has included representing Government departments and Local Authorities in tribunals and in judicial review applications. She has substantial experience in writing Opinions and Advices, drafting skeleton arguments, pre-action protocol letters, N461 and N462 forms and associated grounds.

Instructed as a Junior by the Government of France in judicial review proceedings challenging a decision of the Royal Borough of Kensington and Chelsea. This was a high profile case which received extensive press coverage in respect of the validity of two Certificates of Lawfulness granted for a "mega-basement" owned by Jon Hunt (the former owner of Foxtons Estate Agents) at 10 Kensington Palace Gardens, London. The case not only raised issues relating to the principles of the commencement of development, the status of certificates granted in breach of conditions, the statutory powers to grant certificates, but more general issues as to the extent of legitimate expectation and consultation. The case is awaiting further determination by the Court of Appeal.

Instructed to bring proceedings against the decision of a Local Authority to extend two Conservation Areas in central London. It was argued that decision was ultra vires section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and that it was procedurally unfair due to flaws in the consultation process.

## Planning and Environmental

Nicola has a wide range of expertise including judicial reviews and statutory challenges under the Town and Country Planning Act 1990. She has worked on the side of commercial clients and Local Authorities.

Nicola successfully appeared in an appeal on the refusal of planning permission by a Local Authority to allow for the material change of use of a building from commercial to residential.

Nicola represented a Local Authority in a case which involved the determination of whether pig arcs required planning permission. It raised difficult issues as to the consideration of applications for planning permission where the application focused on the need to consider the cumulative impact of granting planning permission with an allegedly existing unlawful use of land. It also had to address the meaning of "intensive livestock installation" in the relevant European Directive. The Court's finding has been subject to some critical commentary.

Instructed as a Junior by the South Downs National Park Authority in a major Public Inquiry into a proposal to build a free boarding school at the former at St Cuthman's School in Stedham, West Sussex. The application was for a weekly boarding school in a Grade II Listed Building to support the existing Durand Primary Academy in the London Borough of Hackney. In accordance with section 116 of the National Planning Policy Framework, there was a significant presumption against major development in National Parks. It was the National Park Authorities' case that the Applicant had failed to demonstrate that there was no scope to meet the need outside the South Downs National Park. Further, significant harm would be caused to the landscape character of the site and the area

from the extent, scale and nature of the proposals both in use and whilst under construction and the extension would have a detrimental effect on the Listed Building.

Advised a private commercial client as to whether a moored vessel constituted "development". Examined the three criteria of size, permanence and degree of physical attachment to the land.

Nicola advised a Local Authority on material considerations in relation to the grant of a Planning Permission and whether a statutory consultation process had been lawfully undertaken.

She has also been instructed on cases involving the enforcement planning regime. These have included Enforcement Notices and Improvement Notices.

## Oil and Gas

Instructed as Junior Counsel by a Planning Authority relating to a planning application for exploratory drilling for oil and gas in a National Park. The applicant failed to demonstrate that there were exceptional circumstances for such a major development to take place within the protected landscape and that the development was in the public interest. The case raised important issues relating to the balancing of competing public interests; the need to secure sustainable energy and the need to conserve the natural environment.

## Employment

Counsel in multi-day Employment Tribunals concerning all areas of employment law. Experience includes unfair and constructive dismissal, (and other disputes relating to contracts of employment), discrimination and disciplinary hearings. Appeared in the Employment Appeal Tribunal in a case which centred on important legal issues relating to an employee's contractual rights to tips and gratuities.

## Reported Cases

Littlewood & Anor v Powys County Council, [2015] EWHC 2125 (Admin)

McPhee v South Downs National Park Authority [2015] EWHC 1661 (Admin)

Government of the Republic of France v Royal Borough of Kensington and Chelsea [2015] EWHC 3437 (Admin)

Migliaccio & Ors v Samuel Smith (Southern) UKEAT/0267/14/JOJ