GARDEN COURT CHAMBERS

Marc Willers KC

YEAR OF CALL: 1987, 1992 (IRELAND) | YEAR OF SILK: 2014

Chambers RANKED IN UK 2024

The LEGAL 500 UNITED KINGDOM LEADING SILK 2024

2024 25+ HOURS PRO BONO RECOGNITION LIST ENGLAND & WALES

Marc Willers KC specialises in the following areas: environmental law and climate justice; planning law; administrative and public law; civil liberties, human rights and discrimination law; and Gypsy, Traveller and Roma law.

Marc is recommended in the Chambers UK Bar Guide and the Legal 500 in planning law, environmental law, civil liberties and human rights. He is also a member of the Irish Bar, and he is registered with the Bar Council for public access work and assists private clients in all the areas of his expertise.

Marc won the Legal Aid Lawyer of the Year Award in 2011 and he was Joint Head of Garden Court Chambers between 2016 - 2020. He is also the co-editor of *Gypsy and Traveller Law* (3rd edition, 2020 LAG).

"An inspiring silk with an amazing eye for detail."

LEGAL 500, 2024 (ADMINISTRATIVE LAW & HUMAN RIGHTS)

"A committed and knowledgeable barrister who is calm and unflappable on his feet."

LEGAL 500, 2024 (ENVIRONMENT)

"Marc Willers is a persuasive and effective advocate and is very confident on his feet."

CHAMBERS UK, 2024

"An expert in Gypsy and Traveller work, he is undoubtedly an all-rounder."

LEGAL 500, 2022 (PLANNING)

"Marc is the king of knowing everything there is to know about the GRT community."

CHAMBERS UK, 2022 (CIVIL LIBERTIES & HUMAN RIGHTS)

"Great at thinking outside of the box and taking on claims that others would not, he understands the critical environmental concerns facing the planet."

LEGAL 500, 2022 (ENVIRONMENT)

If you would like to get in touch with Marc please contact the clerking team:

contactmyclerks@gclaw.co.uk | **+44 (0)20 7993 7600**

You can also contact Marc directly:

marcw@gclaw.co.uk | **+44 (0)20 7993 7893**

ENVIRONMENTAL LAW AND CLIMATE JUSTICE

Marc's environmental law practice is extensive and includes work within the United Kingdom and abroad.

In the international arena, Marc was instructed as one of the advocates representing the applicants in the successful, ground-breaking Swiss Senior Women's climate change case of ***KlimaSeniorinnen v Switzerland*;** the first ever climate change case to be decided by the Grand Chamber of the European Court of Human Rights (ECtHR).

The Court held that the Article 8 rights of the members of the KlimaSeniorinnen protected by Articles 6 and 8 of the European Convention on Human Rights had been breached by the Swiss State in circumstances where it has failed to take the necessary steps to tackle climate change and its domestic courts had failed to determine their complaint. Judgment was handed down by the Grand Chamber on 9 April 2024 (see the post for more details).

Marc was earlier instructed, with four other members of Chambers, to draft a multi-state climate change complaint filed in the ECtHR, by 6 Portuguese youth applicants in the case of **Duarte Agostinho and Others v Austria and 32 other Member States.** The youth applicants argued that their rights protected by Articles 2, 3, 8, 14 and Article 1 of Protocol 1 of the European Convention on Human Rights are being violated because of the states' individual and collective failure to take appropriate steps to tackle climate change. That case was ruled inadmissible by the Grand Chamber of the ECtHR on 9 April 2024. The case has been widely reported.

Marc was also instructed as lead Counsel to represent CAN-Europe in their application to intervene in the People's Climate Case which was recently determined by the Court of Justice of the European Union.

Marc was also a member of the AllRise NGO's Advisory Board at the time when it compiled and sent its communication to the Office of the Prosecutor of the International Criminal Court requesting an investigation into Brazilian President Jair Bolsonaro for his role in Crimes Against Humanity resulting from ongoing deforestation and related activities in the Amazon rainforest.

In addition, Marc has assisted Leslie Thomas KC and other members of Chambers, in advising inhabitants of the island of Barbuda in several challenges against the state including: a constitutional challenge against the government of Antigua in relation to the Barbudan's rights to their land; and a judicial review challenge by two Barbudans to the Antiguan government's decision to grant planning permission for a new airport on the island on Barbuda brought on environmental grounds. The claimants' challenge was dismissed on grounds that they lacked standing to bring the claim. That decision was the subject of a successful appeal to the Privy Council. Marc led the advocates instructed in that case and presented the argument to the Board when the appeal was heard in November 2023. Judgment was handed down on 27 February 2024 and the Board decided that the

appellants did have standing and so remitted the case for trial before the Caribbean courts.

Here in the UK, Marc is regularly instructed to advise on challenges to the grant of planning permission for development that has an impact on the environment, including fossil fuel development. Notably, he represented Mr Frackman in both the High Court and Court of Appeal in his high-profile judicial review challenge of the decision of the Secretary of State for Communities and Local Government to grant Cuadrilla planning permission for fracking at two sites in Lancashire. He is currently instructed to represent Sarah Finch in her appeal before the Supreme Court against the decision of Surrey County Council to grant planning permission for oil production in the Surrey Hills – a case in which the Supreme Court will decide whether there is a requirement on decision-makers when undertaking an environmental impact assessment to take account of downstream (scope 3) greenhouse gas emissions when deciding whether to grant permission for fossil fuel production. Judgment is awaited.

Marc has also been instructed to advise on challenges to government environmental legislation and policy, including those relating to fracking and climate change as well as decisions taken by regulators such as the Oil and Gas Authority.

Marc speaks about climate change and human rights and has written a number of articles on the subject, including a paper written with Professor Joeri Rogelj entitled 'Youth activists are forcing governments to take account of the intergenerational impact of climate change'.

NOTABLE CASES

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KlimaSeniorinnen v Switzerland (2024)

In the first ever climate change case to be decided by the European Court of Human Rights, its Grand Chamber held that the Article 8 rights of the members of the KlimaSeniorinnen protected by Articles 6 and 8 of the European Convention on Human Rights had been breached by the Swiss State in circumstances where it has failed to take the necessary steps to tackle climate change and its domestic courts had failed to determine their complaint. Marc was one of the two advocates that made oral submissions before the Court on 27 March 2023. Judgment was handed down by the Grand Chamber on 9 April 2024 and can be read here for more details).

John Mussington and Jacklyn Frank v Development Control Authority and ors [2024] UKPC 3

In this case two Barbudans challenged by way of judicial review the Antiguan government's decision to grant

planning permission for a new airport on the island on Barbuda. Their challenge was dismissed in the Caribbean court on grounds that they lacked standing to bring the claim. That decision was the subject of a successful appeal to the Privy Council. Marc led the advocates instructed in that case and presented the argument to the Board when it was heard in November 2023. Judgment was handed down on 27 February 2024 and can be read here. The Board decided that the appellants were entitled to standing and remitted the case back to the Caribbean courts where the case will now proceed to trial. When giving judgment the privy Council made the important pronouncement on standing in environmental cases:

'57. Where an application for judicial review involves issues of environmental concern it is not necessary that the applicant demonstrates an expertise in the subject matter. All that is required is that they demonstrate some knowledge or concern for the subject. So an amateur ornithologist or bird-watcher might raise a concern about the potential loss of a bird's habitat; or a fisherman about the effect of a hydro-electric scheme on fish; or a local historian about the effect on an archaeological or historical site; or a local resident on the loss of a local beauty spot frequented by the local community. In Walton Lord Hope in effect asked the rhetorical question, "Who speaks for the ospreys?". The answer is whoever can demonstrate a genuine interest in their fate.'

Marine Conservation Society, Richard Haward Oysters and Hugo Tagholm v Secretary of State for Environment, Food and Rural Affairs(2023) EHWC 2285 (Admin)

In this judgment, Mr Justice Holgate addressed a challenge brought by Marc's clients, the Marine Conservation Society (MCS), Richard Haward's Oysters and Hugo Tagholm, against the Government's Storm Overflow Discharge Reduction Plan (the Plan). The claimants pursued three grounds to trial. One of the original four grounds of challenge was that the Plan was irrational because it: (i) adopted a definition of "high priority sites" that excluded coastal areas that have been designated for their ecological sensitivity, without any coherent explanation for this choice; and (ii) adopted a definition of "no adverse ecological impact" that can only be applied to freshwater sites. However, this ground of challenge was withdrawn following the government's decision to consult the public on both the extension of the Plan to coastal and estuarine waters, and the development of an appropriate ecological standard for coastal and estuarine waters. The government has also agreed to pay the claimants' reasonable costs incurred in advancing this ground of challenge. Holgate J dismissed the remaining grounds of challenge in a recent judgment and the summary of his reasons can be read **here.**

See press coverage: BBC News, The Times

Aghaji and Garforth v Secretary of State for Business Energy and Industrial Strategy (CO/1097/2022)

Marc represented the claimants (leading Estelle Dehon of Cornerstone Chambers) in this successful judicial review challenge of the government's Net Zero Strategy. The government conceded that the NZS was unlawful in circumstances where it had failed to comply with sections 13 and 14 of the Climate Change Act 2008.

~~Finch v Surrey County Council and Horse Hill Developments Ltd (with Friends of the Earth Ltd intervening)~~ (2022) EWCA Civ 187

Marc represented the claimant (and led Estelle Dehon of Cornerstone Chambers) in this appeal against the decision of Holgate J to refuse her judicial review challenge of SCC's decision to grant planning permission for oil production at the Horse Hill site for 25 years. The main issue in the appeal concerned the adequacy of the environmental impact assessment ("EIA") and focused on the requirement to include within the EIA an assessment of the significant indirect effects of the development on the climate. Since the development's very purpose is the extraction of oil; and since it is inevitable that, following refinement, distribution and sale, it will one day be used in a way that will generate GHG emissions, the claimant argued that the EIA had to include an assessment of those GHG emissions (known as "scope 3 emissions").

The Court of Appeal held that the question of whether an environmental impact was an effect of the development for which planning permission was sought was not a "true legal test". Rather, consideration needs to be given to the degree of connection between the development and its putative effects. They also disagreed with Holgate J's view in the court below that the GHG emissions from future combustion of the refined oil products were, as a matter of law, incapable of falling within the scope of EIA. Rather, the question of whether the scope 3 emissions of the oil extraction needed to be assessed was one of fact and evaluative judgment for the planning authority and the downstream emissions of hydrocarbon development might properly be regarded as indirect environmental effects, depending on the specifics of the project. In the particular circumstances of this case, the majority of the Court of Appeal concluded that the Council's decision to exclude downstream GHG emissions from the EIA was lawful.

Dissenting, Moylan LJ held that the Council's decision was unlawful: in the circumstances, he said, the EIA should have included an assessment of downstream GHG emissions as the inevitable impact of a project that involved the extraction of petroleum for commercial purposes and the Council's reasons for excluding them were legally flawed. Permission to appeal to the Supreme Court has been granted and the appeal was heard in 2023. Judgment is reserved.

Thornton v Oil and Gas Authority and Third Energy UK Gas Limited (2020) EWHC 2615 (Admin)
This was a judicial review challenge of the decision of the Oil and gas Authority to approve the sale by Barclays of Third Energy (a fracking company) to York Energy (a newly incorporated affiliate of a Caymans company (Alpha Energy) with no history of operating in the UK) given the risk that the purchasing company might not pay for the decommissioning costs associated with the operation. Marc led Estelle Dehon of Cornerstone Chambers.

Kenyon v Secretary of State for Housing Communities and Local Government (2020) EWCA Civ 302
Marc represented a local resident who unsuccessfully challenged a decision by the Secretary of State that no environmental impact assessment was required for the proposal that 150 homes be built on a site in Hemsworth in circumstances where the development would lead to an increase in traffic and nitrogen dioxide levels in the town centre which had been designated as an Air Quality Management Area.

Hudson v Royal Borough of Windsor and Maidenhead and Legoland(2019) EWHC 3505 (Admin)
Marc represented the claimant who, acting in his capacity as chairman of the Berkshire branch of the Campaign to Protect Rural England, judicially reviewed the decision of the Royal Borough of Windsor and Maidenhead to grant Legoland planning permission for the construction of a holiday village and other works at its Legoland Windsor site. The claimant complained about the impact of the development on veteran trees within the site and the inadequacy of the proposed buffer zone between the site and the adjacent Windsor Forest and Great Park Site of Special Scientific Interest and Special Area of Conservation and the council's failure to undertake an appropriate assessment. Lang J rejected the claimant's argument that the council had failed to take account of and apply the relevant national planning policy on the protection of veteran trees but accepted that the council had failed to carry out an appropriate assessment as required by the Habitats Directive and Habitats Regulations 2017. Nevertheless, Lang J exercised her discretion not to grant relief. The Court of Appeal upheld Lang J's decision, although it concluded that the protective buffer zone between the

site and the adjacent Windsor Forest and Great Park Site was wider than Lang J had assumed.

Andrews v Secretary of State for Business, Energy and Industrial Strategy and the Secretary of State for Housing, Communities and Local Government (2018)

Marc represented the Mayor of Malton who challenged the government's decision to issue a written ministerial statement (WMS) requiring local authorities to 'recognise' the statutory definition of fracking set out in the Infrastructure Act 2015. Applying that definition, which relates to the volume of fluid used in the process, rather than the nature of the process itself, could lead to fracking operations (which use slightly less fluid than the statutory threshold) being granted planning permission in areas of outstanding natural beauty and national parks, such as the North York Moors. Marc argued that such a fundamental change in planning policy ought to have been the subject of a Strategic Environmental Assessment (SEA) and that the failure to conduct one rendered the WMS unlawful. Holgate J concluded that there was no need for a SEA of the WMS and he dismissed the application for permission to judicial review the WMS. However, importantly, Holgate J found that the reference in the WMS to an expectation that Mineral Planning Authorities (MPAs) 'recognise' the fact that Parliament has defined fracking in legislation was no more than that. He made the point that once MPAs had noted the existence of that definition, they were perfectly entitled to apply the wider definition contained in paragraph 129 of Planning Practice Guidance – provided of course that they explain their reasons for doing so (as the Joint Authorities in North Yorkshire have already done).

Dennett v Lancashire County Council (2018)

Marc was instructed, together with Estelle Dehon, to represent Mr Dennett who sought an injunction to prevent Cuadrilla from carrying out any hydraulic fracturing operations at the Preston New Road site. The grounds for the application highlighted inadequacies in the emergency and health and safety planning for the fracking operations on the site. In the event the application was dismissed.

Steer v Shepway DC and Westgarth [2018] EWHC 238 (Admin)

This was a successful judicial review challenge of a council's decision to grant planning permission for a holiday park in an area of outstanding natural beauty in Kent on grounds that it failed properly to explain its decision.

Frackman v SSCLG and Cuadrilla [2018] EWCA Civ 9

This was an appeal against the decision of Dove J - (2017) EWHC 808 (Admin) - in respect of a High Court planning challenge brought by Mr Frackman against the decision by the Secretary of State for Communities and Local Government to grant Cuadrilla planning permission for fracking operations at a site in Lancashire.

Mr Frackman argued that the Secretary of State erred because he had failed to consider the likely cumulative impacts of the proposed development by only taking into account carbon emissions from "exploration" and ignoring the indirect emissions from the production stage. He also argued the Secretary of State had acted irrationally by failing to apply the precautionary principle when deciding to grant Cuadrilla planning permission, because the public health effects of fracking are currently unknown and so cannot be regulated. The Judge rejected both grounds and the Court of Appeal upheld his decision.

Carolyn Brown v London Borough of Ealing and Queen's Park Rangers[2018] EWCA Civ 556
This appeal from Dove J - (2017) EWHC 467 (Admin) - was heard by the Court of Appeal in 2017. The appellant had judicial reviewed the Council's decision to grant Queen's Park Rangers planning permission to redevelop the 61-acre Warren Farm site in the Metropolitan Open Land (MOL) for mixed-use as a training facility for the football team and community open space/sports facilities. The appeal concerned the meaning of the term "very special circumstances" but also had a very important environmental angle, namely the application of the London Plan's policies on the development of protected open spaces within the MOL.

ADMINISTRATIVE AND PUBLIC LAW

Marc has extensive experience and expertise in administrative and public law, particularly in the context of claims relating to: environmental law and climate justice; planning law; environmental law and climate justice; human rights and discrimination law; as well as those concerning the rights of Gypsies, Roma and Travellers.

Examples of his casework in this field include his representation of two frontline NHS doctors in their judicial review challenge of the government's guidance on the provision of PPE to healthcare workers during the Covid-19 pandemic; the residents of the Fred Wigg Tower in Leytonstone when they challenged the government's decision to place a high-velocity missile system on the roof of their tower block as part of the air defence plan for the 2012 Olympic Games; the young offender claimants who challenged the government's decision to close Ashfield Young Offenders Institute; the Irish Traveller residents of Dale Farm in their widely publicised judicial review of Basildon Council's decision to evict them from their site; and two claimants who successfully challenged the government's net zero strategy.

NOTABLE CASES

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Marine Conservation Society, Richard Haward Oysters and Hugo Tagholm v Secretary of State for Environment, Food and Rural Affairs(2023) EHWC 2285 (Admin)

In this judgment, Mr Justice Holgate addressed a challenge brought by Marc's clients, the Marine Conservation Society (MCS), Richard Haward's Oysters and Hugo Tagholm, against the Government's Storm Overflow Discharge Reduction Plan (the Plan). The claimants pursued three grounds to trial. One of the original four grounds of challenge was that the Plan was irrational because it: (i) adopted a definition of "high priority sites" that excluded coastal areas that have been designated for their ecological sensitivity, without any coherent explanation for this choice; and (ii) adopted a definition of "no adverse ecological impact" that can only be applied to freshwater sites. However, this ground of challenge was withdrawn following the government's decision to consult the public on both the extension of the Plan to coastal and estuarine waters, and the development of an appropriate ecological standard for coastal and estuarine waters. The government has also agreed to pay the claimants' reasonable costs incurred in advancing this ground of challenge. Holgate J dismissed the remaining grounds of challenge in a recent judgment and the summary of his reasons can be read **here.**

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Lisa Smith v SSHCLG (with the EHRC, LGT, FFT, NFGLG and STAG intervening)(2022)EWCA Civ 1391, 31 October 2022

This section 288 TCPA 1990 case concerns a planning inspector's decision to dismiss a planning appeal on grounds which includes a challenge to the lawfulness of the definition of 'gypsies and travellers' in Planning policy for traveller sites (2015) – the complaint being that definition has a particularly detrimental effect on Gypsies and Travellers who are elderly or disabled and their ability to secure planning permission for caravan sites. At first instance Pepperall J. dismissed the challenge ([2021] EWHC 1650 (Admin)). Ms Smith appealed and the Court of Appeal reversed the Judge's decision and held that the planning policy definition of 'gypsies and travellers' did not pursue a legitimate aim and was not proportionate and that it unlawfully discriminated against elderly and disabled Gypsies and Travellers, who were more likely to have to stop travelling on the grounds of ill-health or old age. Having reached that conclusion the Court of Appeal quashed the planning inspector's appeal decision and remitted the appeal for reconsideration. In light of that decision, it is hard to see how the planning policy definition can be relied upon, whether in the context of planning and enforcement decision-making or in the context of the assessment of the accommodation needs of Gypsies and Travellers.

Aghaji and Garforth v Secretary of State for Business Energy and Industrial Strategy (CO/1097/2022)

Marc represented the claimants (leading Estelle Dehon of Cornerstone Chambers) in this successful judicial review challenge of the government's Net Zero Strategy. The government conceded that the NZS was unlawful in circumstances where it had failed to comply with sections 13 and 14 of the Climate Change Act 2008.

Finch v Surrey County Council and Horse Hill Developments Ltd(with Friends of the Earth Ltd intervening) (2022) EWCA Civ 187

Marc represented the claimant (and led Estelle Dehon of Cornerstone Chambers) in this appeal against the decision of Holgate J to refuse her judicial review challenge of SCC's decision to grant planning permission for oil production at the Horse Hill site for 25 years. The main issue in the appeal concerned the adequacy of the environmental impact assessment ("EIA") and focused on the requirement to include within the EIA an assessment of the significant indirect effects of the development on the climate. Since the development's very purpose is the extraction of oil; and since it is inevitable that, following refinement, distribution and sale, it will one day be used in a way that will generate GHG emissions, the claimant argued that the EIA had to include an assessment of those GHG emissions (known as "scope 3 emissions").

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Helen Stride v Wiltshire Council [2022] EWHC 1476 (Admin)

Marc (leading Ella Gunn) represented a claimant in her judicial review of Wiltshire Council's decision-making in relation to a major new distributor road serving a large-scale housing development project, the Future

Chippenham programme. The challenge was brought on three grounds: i) the public were unlawfully excluded from part of the meeting at which the decisions were made, and information was unlawfully not made public contrary to paragraph 9 of schedule 12A of the Local Government Act 1972 (the 1972 Act); ii) the public were not consulted on the proposed development on land owned by the authority and thus in public ownership, and iii) the public were not consulted on the route of the new road as agreed at the meeting. The Judge rejected all three grounds and dismissed the claim.

Lisa Smith v SSHCLG (with the EHRC, LGT, FFT, NFGLG and STAG intervening) [2021] EWHC 1650 (Admin) (and ongoing)

This section 288 TCPA 1990 case concerns a planning inspector's decision to dismiss a planning appeal on grounds which includes a challenge to the lawfulness of the definition of 'gypsies and travellers' in *Planning policy for traveller sites* (2015) – the complaint being that definition has a particularly detrimental effect on Gypsies and Travellers who are elderly or disabled and their ability to secure planning permission for caravan sites. The application was dismissed at first instance by Swift J. An application for permission to appeal was granted by the Court of Appeal and the trial was heard in late 2020 by Pepperall J. The Judge dismissed the challenge ([2021] EWHC 1650 (Admin)) and Ms Smith appealed against that decision. The Court of Appeal heard the appeal in the summer of 2022 and its judgment is awaited.

Marc represented the claimant and led Tessa Buchanan. Aside from the procedural difficulties in getting this case to trial (see the history above) the issue is incredibly important not just in relation to individual cases but also to the assessment of need for Gypsy and Traveller sites which is dependent upon the very same discriminatory definition.

Joshi and Viz v Department of Health and Social Care (BMA and BAPIO intervening)(2020)

Marc was instructed (leading Estelle Dehon of Cornerstone Chambers) to represent two NHS frontline doctors, Dr Meenal Viz and Dr Nishant Joshi, in a judicial review claim whereby they challenged the government's guidance on Personal Protective Equipment (PPE) on grounds that it did not comply with the guidance set out by the World Health Organisation (WHO), particularly in relation to the guidance on when "full" PPE is required, as well as with respect to the reuse and reprocessing of PPE. The challenge also alleged that the guidance failed properly to warn health and social care workers of the risks they face with different levels of PPE and their legal rights to refuse to work when inadequate PPE is available. Proceedings were issued but ultimately settled when the government withdrew the offending guidance and agreed to take other steps that addressed his clients' concerns - the terms of the settlement are set out in the press release issued by Bindmans.

Thornton v Oil and Gas Authority and Third Energy UK Gas Limited(2020) EWHC 2615 (Admin)
This was a judicial review challenge of the decision of the Oil and Gas Authority to approve the sale by Barclays of Third Energy (a fracking company) to York Energy (a newly incorporated affiliate of a Caymans company (Alpha Energy) with no history of operating in the UK) given the risk that the purchasing company might not pay for the decommissioning costs associated with the operation. Marc led Estelle Dehon of Cornerstone Chambers.

Burgos v Amayo v Secretary of State for Housing, Communities and Local Government (Wards Corner Regeneration Project CPO) (2019) EWHC 2792 (Admin)
On 14 September 2016, the London Borough of Haringey ("LBH") made a compulsory purchase order ("CPO") to facilitate the regeneration of land at Seven Sisters Road (above the underground station), including the site of the Seven Sisters Latin Market. The Secretary of State confirmed the CPO on 23 January 2019 and his decision was challenged by the market traders in the High Court on the ground that he had misunderstood the protections offered to them and that he had failed to take proper account of their human rights, the rights of their children and others that have enjoyed the cultural benefits offered by the market.

Frackman v SSCLG and Cuadrilla(2018) EWCA Civ 9
This was an appeal against the decision of Dove J - (2017) EWHC 808 (Admin) - in respect of a planning challenge brought by Mr Frackman against the decision by the Secretary of State for Communities and Local Government to grant Cuadrilla planning permission for fracking operations at a site in Lancashire.

Mr Frackman argued that the Secretary of State erred because he had failed to consider the likely cumulative impacts of the proposed development by only taking into account carbon emissions from "exploration" and ignoring the indirect emissions from the production stage. He also argued that the Secretary of State had acted irrationally by failing to apply the precautionary principle when deciding to grant Cuadrilla planning permission, because the public health effects of fracking are unknown and so cannot be regulated. Dove J rejected both grounds and the Court of Appeal upheld his decision.

Knowles v Department for Work and Pensions (2013) EWHC 19 (Admin)
This was a judicial review challenge in which it was argued that the housing benefit regulations relating to the provision of housing benefit to those Gypsies and Travellers living on private sites were discriminatory and incompatible with Article 14 of the European Convention on Human Rights.

Harrow Community Support Limited v Secretary of State for Defence (2012) EWHC 1921 (Admin)
This was the highly publicised judicial review challenge of the decision to deploy a high velocity missile system

on the roof of the Fred Wigg Tower in Leytonstone, London as part of the air defence plan for the 2012 Olympics.

R (Mary Michelle Sheridan and Others) v Basildon BC (2011) EWHC 2938 (Admin)
This was a judicial review challenge of the council's decision to take direct action to evict Irish Travellers from their plots on Dale Farm. The case received worldwide publicity and was heard at first instance by Ouseley J and Lord Justice Sullivan on appeal.

PLANNING LAW

Marc has a wide experience and expertise in planning law and represents both developers and objectors in planning and enforcement appeals, statutory reviews and appeals, examinations in public and planning enforcement proceedings in both the civil and criminal courts.

NOTABLE CASES

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Lisa Smith v SSHCLG (with the EHRC, LGT, FFT, NFGLG and STAG intervening) [2021] EWHC 1650 (Admin) 17 June 2021 (and ongoing)

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Helen Stride v Wiltshire Council [2022] EWHC 1476 (Admin)

Marc (leading Ella Gunn) represented a claimant in her judicial review of Wiltshire Council's decision-making in relation to a major new distributor road serving a large-scale housing development project, the Future Chippenham programme. The challenge was brought on three grounds: i) the public were unlawfully excluded from part of the meeting at which the decisions were made, and information was unlawfully not made public contrary to paragraph 9 of Schedule 12A of the Local Government Act 1972 (the 1972 Act); ii) the public were not consulted on the proposed development on land owned by the authority and thus in public ownership, and iii) the public were not consulted on the route of the new road as agreed at the meeting. The Judge rejected all three grounds and dismissed the claim.

Finch v Surrey County Council and Horse Hill Developments Ltd (with Friends of the Earth Ltd intervening) (2022) EWCA Civ 187

Marc represented the claimant (and led Estelle Dehon of Cornerstone Chambers) in this appeal against the decision of Holgate J to refuse her judicial review challenge of SCC's decision to grant planning permission for oil production at the Horse Hill site for 25 years. The main issue in the appeal concerned the adequacy of the environmental impact assessment ("EIA") and focused on the requirement to include within the EIA an assessment of the significant indirect effects of the development on the climate. Since the development's very purpose is the extraction of oil; and since it is inevitable that, following refinement, distribution and sale, it will one day be used in a way that will generate GHG emissions, the claimant argued that the EIA had to include an assessment of those GHG emissions (known as "scope 3 emissions").

The Court of Appeal held that the question of whether an environmental impact was an effect of the development for which planning permission was sought was not a "true legal test". Rather, consideration needs to be given to the degree of connection between the development and its putative effects. They also disagreed with Holgate J's view in the court below that the GHG emissions from future combustion of the refined oil products were, as a matter of law, incapable of falling within the scope of EIA. Rather, the question of whether the scope 3 emissions of the oil extraction needed to be assessed was one of fact and evaluative judgment for the planning authority and the downstream emissions of hydrocarbon development might properly be regarded as indirect environmental effects, depending on the specifics of the project. In the particular circumstances of this case, the majority of the Court of Appeal concluded that the Council's decision to exclude downstream GHG emissions from the EIA was lawful.

Dissenting, Moylan LJ held that the Council's decision was unlawful: in the circumstances, he said, the EIA should have included an assessment of downstream GHG emissions as the inevitable impact of a project that

involved the extraction of petroleum for commercial purposes and the Council's reasons for excluding them were legally flawed. Permission to appeal to the Supreme Court has been granted and the appeal was heard in 2023. Judgment is reserved.

Finch v Surrey County Council and Horse Hill Developments Ltd (with Friends of the Earth Ltd intervening)(2020) EWHC 3566 (Admin)

Marc represented the claimant (and led Estelle Dehon of Cornerstone Chambers) in this judicial review challenge of SCC's decision to grant planning permission for oil production at the Horse Hill site for 25 years. Permission for judicial review was granted by the Court of Appeal earlier in 2020 and Friends of the Earth intervened. Holgate J heard the case in October 2020. The Judge dismissed the challenge having rejected the argument that the developer's environmental statement was unlawful because it did not assess the downstream (scope 3) greenhouse gas emissions resulting from the combustion of oil produced at Horse Hill. The claimant has now been granted permission to appeal that decision to the Court of Appeal and the case clearly has wide ramifications for fossil fuel developments and the question of whether the UK government will be able to meet its climate change budgetary targets if no one is assessing downstream emissions.

Charlotte Smith v SSHCLG [2020] *Charlotte Smith v SSHCLG and Newark* 16th October 2020, Mr Strachan QC, sitting as a Deputy High Court Judge (CO/2063/2019) – transcript awaited.

Marc represented the claimant in this successful s288 TCPA 1990 planning challenge to an Inspector's decision to refuse planning permission for a Gypsy site in Newark. The Judge concluded that there was substantial doubt whether the Inspector had complied with national planning policy and treated the Council's lack of a 5 year supply as a 'significant material consideration'.

Hudson v Royal Borough of Windsor and Maidenhead and Legoland (2019) EWHC 3505 (Admin)

Marc represented the claimant who, acting in his capacity as chairman of the Berkshire branch of the Campaign to Protect Rural England, judicially reviewed the decision of the Royal Borough of Windsor and Maidenhead to grant Legoland planning permission for the construction of a holiday village and other works at its Legoland Windsor site. The claimant complained about the impact of the development on veteran trees within the site and the inadequacy of the proposed buffer zone between the site and the adjacent Windsor Forest and Great Park Site of Special Scientific Interest and Special Area of Conservation and the council's failure to undertake an appropriate assessment. Lang J rejected the claimant's argument that the council had failed to take account of and apply the relevant national planning policy on the protection of veteran trees but accepted that the council had failed to carry out an appropriate assessment as required by the Habitats Directive and Habitats Regulations 2017. Nevertheless, Lang J exercised her discretion not to grant relief. The

Court of Appeal upheld Lang J's decision, although it concluded that the protective buffer zone between the site and the adjacent Windsor Forest and Great Park Site was wider than Lang J had assumed.

Steer v Shepway DC and Westgarth (2018) EWHC 238 (Admin)
A successful judicial review challenge of a council's decision to grant planning permission for a holiday park in an area of outstanding natural beauty in Kent on grounds that it failed properly to explain its decision.

Frackman v SSCLG and Cuadrilla(2018) EWCA Civ 9
This was an appeal against the decision of Dove J – (2017) EWHC 808 (Admin) – in respect of a High Court planning challenge brought by Mr Frackman against the decision by the Secretary of State for Communities and Local Government to grant Cuadrilla planning permission for fracking operations at a site in Lancashire.

Mr Frackman argued that the Secretary of State erred because he had failed to consider the likely cumulative impacts of the proposed development by only taking into account carbon emissions from "exploration" and ignoring the indirect emissions from the production stage. He also argued the Secretary of State had acted irrationally by failing to apply the precautionary principle when deciding to grant Cuadrilla planning permission, because the public health effects of fracking are currently unknown and so cannot be regulated. The Judge rejected both grounds and the Court of Appeal upheld his decision.

Carolyn Brown v London Borough of Ealing and Queen's Park Rangers (2018) EWCA Civ 556
This appeal from Dove J – [2017] EWHC 467 (Admin) – was heard by the Court of Appeal in 2017. The Appellant judicial reviewed the Council's decision to grant Queen's Park Rangers planning permission to redevelop the 61-acre Warren Farm site in the Metropolitan Open Land (MOL) for mixed use as a training facility for the football team and community open space/sports facilities. The appeal concerned the meaning of the term 'very special circumstances' but also had a very important environmental angle, namely the application of the London Plan's policies on the development of protected open spaces within the MOL.

O'Brien v South Cambridgeshire DC and SSCLG (2016) EWHC 36 (Admin)
This was a claim of judicial review concerning the proper construction and application of the planning enforcement related power of a local authority under section 70C of the Town and Country Planning Act 1990, and related transitional provisions. In a particularly detailed judgment, Lewis J considers the underlying statutory purpose of the power, and the question of proportionate enforcement action under Article 8 ECHR, within the context of alleged, delayed and abusive reliance by a planning authority upon an extant enforcement notice issued in 2005.

Stevens v SSCLG and Guildford BC (2013) EWHC 792 (Admin)

This was a statutory challenge brought in respect of a planning inspector's decision to refuse temporary planning permission for a Gypsy site. The claimant argued that the inspector had failed to take account of the best interests of the children in accordance with the principles laid down by Baroness Hale in the Supreme Court decision in *ZH (Tanzania) v SSHD* [2011] UKSC 4. The Judge accepted that the principles were relevant and gave guidance on their application in planning cases but concluded that on the facts that the Inspector had complied with those principles.

CIVIL LIBERTIES AND HUMAN RIGHTS

Marc's human rights practice is extensive.

Marc takes instructions on human rights claims in cases before domestic and international courts.

In the international arena, Marc was instructed as one of the advocates representing the applicants in the ground-breaking successful Swiss Senior Women's climate change case of KlimaSeniorinnen v Switzerland; the first ever climate change case to be decided by the Grand Chamber of the European Court of Human Rights (ECtHR).

The Court held that the Article 8 rights of the members of the KlimaSeniorinnen protected by Articles 6 and 8 of the European Convention on Human Rights had been breached by the Swiss State in circumstances where it has failed to take the necessary steps to tackle climate change and its domestic courts had failed to determine their complaint. Judgment was handed down by the Grand Chamber on 9 April 2024 (see the post for more details).

Marc was earlier instructed, with four other members of Chambers, to draft a multi-state climate change complaint filed in the ECtHR, by 6 Portuguese youth applicants in the case of Duarte Agostinho and Others v Austria and 32 other Member States. The youth applicants argued that their rights protected by Articles 2, 3, 8, 14 and Article 1 of Protocol 1 of the European Convention on Human Rights are being violated because of the states' individual and collective failure to take appropriate steps to tackle climate change. That case was ruled inadmissible by the Grand Chamber of the ECtHR on 9 April 2024. The case has been widely reported.

Marc is the co-editor of *Gypsy and Traveller Law* (3rd edition, LAG 2020) and is also the editor of the Council of Europe's handbook for lawyers defending Roma and Travellers entitled ~~*Ensuring access to rights for Roma and Travellers - The role of the European Court of Human Rights* (2014).~~

Marc also speaks regularly at conferences and seminars in both the UK and abroad on human rights and discrimination and has been instructed by the Council of Europe and the EU to act as an expert on these topics on a number of occasions.

Marc has been instructed to represent Gypsies and Travellers in their proposed challenge to the discriminatory eviction powers contained in the Police Crime Sentencing and Courts Act 2022 (leading Oliver Persey).

NOTABLE CASES

Please see a list of Marc's notable cases below. Click here to see some of Marc's cases featured in our news feed.

KlimaSeniorinnen v Switzerland (2024)

In the first ever climate change case to be decided by the European Court of Human Rights its Grand Chamber held that the Article 8 rights of the members of the KlimaSeniorinnen protected by Articles 6 and 8 of the European Convention on Human Rights had been breached by the Swiss State in circumstances where it has failed to take the necessary steps to tackle climate change and its domestic courts had failed to determine their complaint. Marc was one of the two advocates that made oral submissions before the Court on 27 March 2023. Judgment was handed down by the Grand Chamber on 9 April 2024 (see the post for more details).

Wolverhampton City Council v London Gypsies and Travellers and others [2023] UKSC 47

Marc was part of a team of advocates, together with Richard Drabble KC, Tessa Buchanan and Owen Greenhall that represented the Gypsy and Traveller NGO appellants in a case in the Supreme Court concerning whether final injunctions can be made against unidentified persons unknown. The Court held that injunctions against unidentified and unidentifiable persons could be granted but it emphasised the exceptional nature of the remedy and the significant substantive and procedural safeguards that should be in place before any such relief is sought and granted.

Marine Conservation Society, Richard Haward Oysters and Hugo Tagholm v Secretary of State for Environment, Food and Rural Affairs (2023) EHWC 2285 (Admin)

In this judgment, Mr Justice Holgate addressed a challenge brought by Marc's clients, the Marine Conservation Society (MCS), Richard Haward's Oysters and Hugo Tagholm, against the Government's Storm Overflow Discharge Reduction Plan (the Plan). The claimants pursued three grounds to trial. One of the original four grounds of challenge was that the Plan was irrational because it: (i) adopted a definition of "high priority sites" that excluded coastal areas that have been designated for their ecological sensitivity, without any coherent explanation for this choice; and (ii) adopted a definition of "no adverse ecological impact" that can only be applied to freshwater sites. However, this ground of challenge was withdrawn following the

government's decision to consult the public on both the extension of the Plan to coastal and estuarine waters, and the development of an appropriate ecological standard for coastal and estuarine waters. The government has also agreed to pay the claimants' reasonable costs incurred in advancing this ground of challenge. Holgate J dismissed the remaining grounds of challenge in a recent judgment and the summary of his reasons can be read here.

See press coverage: BBC News, The Times

Barking and Dagenham v Persons Unknown [2022] EWCA Civ 13

This was an appeal by local authorities against the decision on Nicklin J in *LB Barking & Dagenham v Persons Unknown and others* [2021] EWHC 1201 (QB)[MWK1] in which he ruled that final injunctions granted against "Persons Unknown" are subject to the fundamental principle that a final injunction operates only between the parties to the proceedings and does not bind newcomers. Marc represented the Interveners, London Gypsy Travellers, Friends Families and Travellers and the National Federation of Gypsy Liaison Groups and led Tessa Buchanan and Owen Greenhall. The Court of Appeal allowed the appeal, having concluded that the earlier Court of Appeal decision in *Canada Goose v Persons Unknown* [2020] EWCA Civ 303, which Nicklin J had relied upon, had been wrongly decided. The Interveners were granted permission to appeal to the Supreme Court and their appeal was heard in February 2023. Judgment is reserved.

~~Lisa Smith v SSHCLG (with the EHRC, LGT, FFT, NFGLG and STAG intervening)~~(2022)EWCA Civ 1391, 31 October 2022

This section 288 TCPA 1990 case concerns a planning inspector's decision to dismiss a planning appeal on grounds which includes a challenge to the lawfulness of the definition of 'gypsies and travellers' in Planning policy for traveller sites (2015) – the complaint being that definition has a particularly detrimental effect on Gypsies and Travellers who are elderly or disabled and their ability to secure planning permission for caravan sites. At first instance Pepperall J. dismissed the challenge ([2021] EWHC 1650 (Admin)). Ms Smith appealed and the Court of Appeal reversed the Judge's decision and held that the planning policy definition of 'gypsies and travellers' did not pursue a legitimate aim and was not proportionate and that it unlawfully discriminated against elderly and disabled Gypsies and Travellers, who were more likely to have to stop travelling on the grounds of ill-health or old age. Having reached that conclusion the Court of Appeal quashed the planning inspector's appeal decision and remitted the appeal for reconsideration. In light of that decision, it is hard to see how the planning policy definition can be relied upon, whether in the context of planning and enforcement decision-making or in the context of the assessment of the accommodation needs of Gypsies and Travellers.

Vavan v Armenia (2021) (Application no. 50939/10), 23 September 2021

Marc was instructed in this case before the ECtHR which concerned the allegedly unlawful termination of a lease agreement relating to a plot of municipal land and the destruction of a café situated on it. The ECtHR concluded that the applicant's rights protected by Article 1 of Protocol 1 of the Convention had been breached and awarded the applicant 100,000 euros in non-pecuniary damages.

LB Barking & Dagenham v Persons Unknown and others **[2021] EWHC 1201 (QB)**

This important case directly concerns 38 different local authorities which had sought and obtained wide injunctions which prevented Gypsies and Travellers from camping on public land and has implications for many more cases. Mr Justice Nicklin ruled that final injunctions granted against "Persons Unknown" are subject to the fundamental principle that a final injunction operates only between the parties to the proceedings and does not bind newcomers. The Judge also decided that injunctions to restrain unauthorised encampment do not fall into the exceptional category of civil injunction that can be granted *contra mundum*. Marc represented the Interveners, London Gypsy Travellers, Friends Families and Travellers and the National Federation of Gypsy Liaison Groups and led Tessa Buchanan and Owen Greenhall.

Lisa Smith v SSHCLG (with the EHRC, LGT, FFT, NFGLG and STAG intervening) [2021] EWHC 1650 (Admin) 17 June 2021 (and ongoing)

This section 288 TCPA 1990 case concerns a planning inspector's decision to dismiss a planning appeal on grounds which includes a challenge to the lawfulness of the definition of 'gypsies and travellers' in Planning policy for traveller sites (2015) – the complaint being that definition has a particularly detrimental effect on Gypsies and Travellers who are elderly or disabled and their ability to secure planning permission for caravan sites. The application was dismissed at first instance by Swift J. An application for permission to appeal was granted by the Court of Appeal and the trial was heard in late 2020 by Pepperall J. The Judge dismissed the challenge ([2021] EWHC 1650 (Admin)) and Ms Smith appealed against that decision. The Court of Appeal heard the appeal in the summer of 2022 and its judgment is awaited.

Marc represented the claimant and led Tessa Buchanan. Aside from the procedural difficulties in getting this case to trial (see the history above) the issue is incredibly important not just in relation to individual cases but also to the assessment of the need for Gypsy and Traveller sites which is dependent upon the very same discriminatory definition.

London Borough of Bromley v Persons Unknown, London Gypsies and Travellers and others (2020) EWCA Civ 120

In recent years there has been a growing trend for local authorities to apply to the court for 'wide injunctions'

to prohibit Gypsies and Travellers from camping on public land in their areas. In one such case, the London Borough of Bromley's application was opposed by a charity called London Gypsies Travellers (LGT). Marc was instructed, together with Tessa Buchanan to represent LGT (substantially pro bono) and they persuaded the judge in the High Court, Mulcahy QC, that the application should be refused. Bromley's appeal was dismissed by the Court of Appeal. Importantly, when giving judgment the Court of Appeal deprecated the use of 'wide injunctions' save in the most exceptional circumstances. Thus Coulson LJ said:

'109. Finally, it must be recognised that the cases referred to above make plain that the Gypsy and Traveller community have an enshrined freedom not to stay in one place but to move from one place to another. An injunction which prevents them from stopping at all in a defined part of the UK comprises a potential breach of both the Convention and the Equality Act, and in future should only be sought when, having taken all the steps noted above, a local authority reaches the considered view that there is no other solution to the particular problems that have arisen or are imminently likely to arise.'

Mulvenna and Smith v Secretary of State for Communities and Local Government (SSCLG) and the Equality and Human Rights Commission (EHRC) (2017) EWCA Civ 1850
These two judicial review claims followed *Moore and Coates v SSCLG and EHRC* [2015] EWHC 44 (Admin) in which Gilbart J found the Secretary of State had unlawfully discriminated against Romani Gypsies/Irish Travellers by recovering all Gypsy/Traveller caravan site planning appeals for his own determination in breach of the Equality Act 2010 and Articles 8 and 14 of the European Convention on Human Rights. The claimants argued that the Secretary of State's unlawful recovery of their appeals had a "domino effect", which rendered his own appeal decisions unlawful. The EHRC supported that argument but Cranston J rejected it and the Court of Appeal upheld his decision.

Traveller Movement v J D Wetherspoon PLC (2015) Central London County Court, 18th May 2015, HHJ Hand QC
In this landmark discrimination claim the court held that a pub that had refused entry to Irish Travellers and Romani Gypsies and their companions following an annual conference organised by the Traveller Movement had committed direct race discrimination because the pub landlord made stereotypical assumptions that Irish Travellers and Romany Gypsies were likely to cause disorder. The court also held that the Travellers' and Gypsies' companions also succeeded in their claims for associative direct discrimination.

Buckland v United Kingdom (2012) Application No 40060/08, 18th September
In this case the ECtHR found that the Article 8 rights of a Romani Gypsy had been violated in circumstances where she had not been given the opportunity to challenge the proportionality of a decision to seek possession

of her rented pitch on an authorised site before an independent tribunal. The ECtHR awarded the applicant EUR 4000 and the Welsh Government subsequently amended the law to make it compatible with the ECHR.

ROMANI GYPSY AND TRAVELLER RIGHTS

Marc is well known for his representation of Gypsies, Roma and Travellers and has appeared in many leading cases relating to rights, including: the high-profile judicial review challenge of the decision taken by Basildon Borough Council to use its direct action powers to evict Irish Traveller families from their homes on Dale Farm; and the successful discrimination claim brought against the pub chain, JD Wetherspoon, by a registered charity called the Traveller Movement and a number of Gypsies and Travellers.

Most recently, Marc has represented a Romani Gypsy in her ongoing challenge to the planning definition of 'gypsies and travellers' laid down in the government's *Planning policy for traveller sites* (2015) on grounds that it is discriminatory.

Marc is the co-editor of *Gypsy and Traveller Law* (3rd edition, LAG 2020) and is also the editor of the Council of Europe's handbook for lawyers defending Roma and Travellers entitled *Ensuring access to rights for Roma and Travellers - The role of the European Court of Human Rights* (2014). He is also on the Advisory Board of the European Roma Rights Centre and is a Trustee of the registered UK charity, Friends Families and Travellers.

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Marc was part of a team of advocates, together with Richard Drabble KC, Tessa Buchanan and Owen Greenhall that represented the Gypsy and Traveller NGO appellants in a case in the Supreme Court concerning whether final injunctions can be made against unidentified persons unknown, having represented the NGOs in the lower courts. The Supreme Court held that injunctions against unidentified and unidentifiable persons could be granted but it emphasised the exceptional nature of the remedy and the significant substantive and procedural safeguards that should be in place before any such relief is sought and granted.

~~***Lisa Smith v SSHCLG (with the EHRC, LGT, FFT, NFGLG and STAG intervening)***~~(2022)EWCA Civ 1391, 31 October 2022

This section 288 TCPA 1990 case concerns a planning inspector's decision to dismiss a planning appeal on grounds which includes a challenge to the lawfulness of the definition of 'gypsies and travellers' in Planning policy for traveller sites (2015) – the complaint being that definition has a particularly detrimental effect on Gypsies and Travellers who are elderly or disabled and their ability to secure planning permission for caravan sites. At first instance Pepperall J. dismissed the challenge ([2021] EWHC 1650 (Admin)). Ms Smith appealed and the Court of Appeal reversed the Judge's decision and held that the planning policy definition of 'gypsies and travellers' did not pursue a legitimate aim and was not proportionate and that it unlawfully discriminated against elderly and disabled Gypsies and Travellers, who were more likely to have to stop travelling on the grounds of ill-health or old age. Having reached that conclusion the Court of Appeal quashed the planning inspector's appeal decision and remitted the appeal for reconsideration. In light of that decision, it is hard to see how the planning policy definition can be relied upon, whether in the context of planning and enforcement decision-making or in the context of the assessment of the accommodation needs of Gypsies and Travellers.

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Marc represented the claimant and led Tessa Buchanan. Aside from the procedural difficulties in getting this case to trial (see the history above) the issue is incredibly important not just in relation to individual cases but also to the assessment of need for Gypsy and Traveller sites which is dependent upon the very same discriminatory definition.

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This important case directly concerns 38 different local authorities which had sought and obtained wide injunctions which prevented Gypsies and Travellers from camping on public land and has implications for many more cases. Mr Justice Nicklin ruled that final injunctions granted against "Persons Unknown" are subject to the fundamental principle that a final injunction operates only between the parties to the proceedings and does not bind newcomers. The Judge also decided that injunctions to restrain unauthorised encampment do not fall into the exceptional category of civil injunction that can be granted *contra mundum*. Marc represented the Interveners, London Gypsy Travellers, Friends Families and Travellers and the National Federation of Gypsy Liaison Groups and led Tessa Buchanan and Owen Greenhall. The local authorities appealed against the Judge's decision and the Court of Appeal's decision is now awaited.

Charlotte Smith v SSHCLG (2020)

Charlotte Smith v SSHCLG and Newark 16th October 2020, Mr Strachan QC, sitting as a Deputy High Court Judge (CO/2063/2019) – transcript awaited.

Marc represented the claimant in this successful s288 TCPA 1990 planning challenge to an Inspector's decision to refuse planning permission for a Gypsy site in Newark. The Judge concluded that there was substantial doubt whether the Inspector had complied with national planning policy and treated the Council's lack of a 5 year supply as a 'significant material consideration'.

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Over the last year or so there has been a growing trend for local authorities to apply to the court for 'wide injunctions' to prohibit Gypsies and Travellers from camping on public land in their areas. In one such case, the London Borough of Bromley's application was opposed by a charity called London Gypsies Travellers (LGT). Marc was instructed, together with Tessa Buchanan to represent LGT (substantially pro bono) and they persuaded the judge in the High Court, Mulcahy QC, that the application should be refused. Bromley's appeal was dismissed by the Court of Appeal. Importantly, when giving judgment the Court of Appeal deprecated the use of 'wide injunctions' save in the most exceptional circumstances. Thus Coulson LJ said:

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These two judicial review claims followed ~~*Moore and Coates v SSCLG and EHRC* [2015] EWHC 44 (Admin) in~~ which Gilbart J found the Secretary of State had unlawfully discriminated against Romani Gypsies/Irish Travellers by recovering all Gypsy/Traveller caravan site planning appeals for his own determination in breach of the Equality Act 2010 and Articles 8 and 14 of the European Convention on Human Rights (the Convention) . The claimants argued that the Secretary of State's unlawful recovery of their appeals had a "domino effect", which rendered his own appeal decisions unlawful. The EHRC supported that argument but Cranston J rejected it and the Court of Appeal upheld his decision.

Traveller Movement v J D Wetherspoon PLC (2015) Central London County Court, 18th May 2015, HHJ Hand QC

In this landmark discrimination claim the Court held that a pub, which had refused entry to Irish Travellers and Romani Gypsies and their companions following an annual conference organised by the Traveller Movement, had committed direct race discrimination because the pub landlord made stereotypical assumptions that Irish Travellers and Romany Gypsies were likely to cause disorder. The Court also held that the Travellers' and Gypsies' companions also succeeded in their claims for associative direct discrimination.

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This was a statutory challenge brought in respect of a planning inspector's decision to refuse temporary planning permission for a Gypsy site. The Claimant argued that the Inspector had failed to take account of the best interests of the children in accordance with the principles laid down by Baroness Hale in the Supreme Court decision in *ZH (Tanzania) v SSHD* [2011] UKSC 4. The Judge accepted that the principles were relevant and gave guidance on their application in planning cases but concluded that on the facts that the Inspector had complied with those principles.

Knowles v Department for Work and Pensions (2013) EWHC 19 (Admin)

This was a judicial review challenge in which it was argued that the housing benefit regulations relating to the

provision of housing benefit to those Gypsies and Travellers living on private sites were discriminatory and incompatible with Article 14 of the Convention.

Buckland v United Kingdom (2012) Application No 40060/08, 18th September
In this case the ECtHR found that the Article 8 rights of a Romani Gypsy had been violated in circumstances where she had not been given the opportunity to challenge the proportionality of a decision to seek possession of her rented pitch on an authorised site before an independent tribunal. The ECtHR awarded the applicant EUR 4000 and the Welsh Government subsequently amended the law to make it compatible with the ECHR.

Secretary of State for Environment Food and Rural Affairs v Meier and others (2009) UKSC 11
In this case concerning New Travellers, the Supreme Court held that a wide possession order granted to the Forestry Commission in respect of land which it owned and occupied and of which no-one was, at present, in unauthorised occupation, should be discharged and in so doing, the Supreme Court also overturned the Court of Appeal's earlier decision in the case of *Drury v Secretary of State for the Environment* [2004] EWCA Civ 200.

R (Lisa Smith) v London Development Agency and SSTI (2007) EWHC 1013 Admin
This was a judicial review challenge brought by Romani Gypsy to the Compulsory Purchase Order of land used as a Gypsy site for the purposes of the Olympics.

R (Clarke) v Secretary of State for Transport, Local Government and the Regions (2002) EWCA Civ 819 and [2002] JPL 1365
This was a successful statutory challenge by a Romani Gypsy to a planning appeal decision in which it was established that the offer of bricks and mortar accommodation to a Gypsy with a cultural aversion to bricks and mortar could constitute a breach of Article 8 of the Convention.

Coster v UK (2001) 33 EHRR 20
This was one of five complaints brought before the European Court of Human Rights by Gypsies and Travellers who claimed that enforcement action taken against them had breached their rights protected by articles 8 and article 1 of protocol 1 of ECHR. The seminal lead judgment can be found in the judgment in the case of *Chapman v UK* (2001) 33 EHRR 18.

DISCRIMINATION

Marc's discrimination practice is extensive.

Marc takes instructions on discrimination claims before both domestic courts and the European Court of Human Rights.

In the international arena, Marc was instructed, with four other members of Chambers to draft the multi-state climate change complaint with the European Court of Human Rights, by 6 Portuguese youth applicants in the case of ***Duarte Agostinho and Others v Austria and 32 other Member States***. The youth applicants argue that their rights protected by Articles 2, 3, 8, 14 and Article 1 of Protocol 1 of the European Convention on Human Rights are being violated because of the states' individual and collective failure to take appropriate steps to tackle climate change. The case has been widely reported.

Marc's discrimination case work in domestic courts tends to focus on discrimination and prejudice faced by Gypsies, Travellers and Roma in the UK.

Marc also speaks regularly at conferences and seminars in both the UK and abroad on discrimination and has been instructed by the Council of Europe and the EU to act as an expert on these topics on a number of occasions.

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Please see a list of Marc's notable cases below. Click here to see some of Marc's cases featured in our news feed.

~~Lisa Smith v SSHCLG (with the EHRC, LGT, FFT, NFGLG and STAG intervening)~~(2022)EWCA Civ 1391, 31 October 2022

This section 288 TCPA 1990 case concerns a planning inspector's decision to dismiss a planning appeal on grounds which includes a challenge to the lawfulness of the definition of 'gypsies and travellers' in Planning policy for traveller sites (2015) – the complaint being that definition has a particularly detrimental effect on Gypsies and Travellers who are elderly or disabled and their ability to secure planning permission for caravan sites. At first instance Pepperall J. dismissed the challenge ([2021] EWHC 1650 (Admin)). Ms Smith appealed and the Court of Appeal reversed the Judge's decision and held that the planning policy definition of 'gypsies and travellers' did not pursue a legitimate aim and was not proportionate and that it unlawfully discriminated against elderly and disabled Gypsies and Travellers, who were more likely to have to stop travelling on the grounds of ill-health or old age. Having reached that conclusion the Court of Appeal quashed the planning inspector's appeal decision and remitted the appeal for reconsideration. In light of that decision, it is hard to see how the planning policy definition can be relied upon, whether in the context of planning and enforcement decision-making or in the context of the assessment of the accommodation needs of Gypsies and Travellers.

Lisa Smith v SSHCLG (with the EHRC, LGT, FFT, NFGLG and STAG intervening) [2021] EWHC 1650 (Admin) 17 June 2021 (and ongoing)

This section 288 TCPA 1990 case concerns a planning inspector's decision to dismiss a planning appeal on grounds which includes a challenge to the lawfulness of the definition of 'gypsies and travellers' in *Planning policy for traveller sites* (2015) – the complaint being that definition has a particularly detrimental effect on Gypsies and Travellers who are elderly or disabled and their ability to secure planning permission for caravan sites. The application was dismissed at first instance by Swift J. An application for permission to appeal was granted by the Court of Appeal and the trial was heard in late 2020 by Pepperall J. The Judge dismissed the challenge ([2021] EWHC 1650 (Admin)) and Ms Smith appealed against that decision. The Court of Appeal heard the appeal in the summer of 2022 and its judgment is recorded above.

Marc represented the claimant and led Tessa Buchanan. Aside from the procedural difficulties in getting this case to trial (see the history above) the issue is incredibly important not just in relation to individual cases but also to the assessment of need for Gypsy and Traveller sites which is dependent upon the very same discriminatory definition.

London Borough of Bromley v Persons Unknown, London Gypsies and Travellers and others (2020) EWCA Civ 120

Over the last year or so there has been a growing trend for local authorities to apply to the court for 'wide injunctions' to prohibit Gypsies and Travellers from camping on public land in their areas. In one such case, the London Borough of Bromley's application was opposed by a charity called London Gypsies Travellers (LGT). Marc was instructed, together with Tessa Buchanan to represent LGT (substantially pro bono) and they persuaded the judge in the High Court, Mulcahy QC, that the application should be refused. Bromley's appeal was dismissed by the Court of Appeal. Importantly, when giving judgment the Court of Appeal deprecated the use of 'wide injunctions' save in the most exceptional circumstances. Thus Coulson LJ said:

'109. Finally, it must be recognised that the cases referred to above make plain that the Gypsy and Traveller community have an enshrined freedom not to stay in one place but to move from one place to another. An injunction which prevents them from stopping at all in a defined part of the UK comprises a potential breach of both the Convention and the Equality Act, and in future should only be sought when, having taken all the steps noted above, a local authority reaches the considered view that there is no other solution to the particular problems that have arisen or are imminently likely to arise.'

Mulvenna and Smith v Secretary of State for Communities and Local Government (SSCLG) and the Equality and Human Rights Commission (EHRC)(2017) EWCA Civ 1850These two judicial

review claims followed ~~*Moore and Coates v SSCLG and EHRC* (2015) EWHC 44 (Admin)~~ in which Gilbart J found the Secretary of State had unlawfully discriminated against Romani Gypsies/Irish Travellers by recovering all Gypsy/Traveller caravan site planning appeals for his own determination in breach of the Equality Act 2010 and Articles 8 and 14 of the European Convention on Human Rights (the Convention). The claimants argued that the Secretary of State's unlawful recovery of their appeals had a "domino effect", which rendered his own appeal decisions unlawful. The EHRC supported that argument but Cranston J rejected it and the Court of Appeal upheld his decision.

Traveller Movement v J D Wetherspoon PLC(2015) Central London County Court, 18th May 2015, HHJ Hand QC
In this landmark discrimination claim the court held that a pub that had refused entry to Irish Travellers and Romani Gypsies and their companions following an annual conference organised by the Traveller Movement had committed direct race discrimination because the pub landlord made stereotypical assumptions that Irish Travellers and Romany Gypsies were likely to cause disorder. The court also held that the Travellers' and Gypsies' companions also succeeded in their claims for associative direct discrimination.

INTERNATIONAL

Marc regularly works with grassroots campaigners, high-profile charities and NGOs on international environmental cases.

Marc was instructed as one of the advocates representing the applicants in the ground-breaking successful Swiss Senior Women's climate change case of ***KlimaSeniorinnen v Switzerland***; the first ever climate change case to be decided by the Grand Chamber of the European Court of Human Rights (ECtHR).

The Court held that the Article 8 rights of the members of the ***KlimaSeniorinnen*** protected by Articles 6 and 8 of the European Convention on Human Rights had been breached by the Swiss State in circumstances where it has failed to take the necessary steps to tackle climate change and its domestic courts had failed to determine their complaint. Judgment was handed down by the Grand Chamber on 9 April 2024 (see the post for more details).

Marc was earlier instructed, with four other members of Chambers, to draft a multi-state climate change complaint filed in the ECtHR, by 6 Portuguese youth applicants in the case of ***Duarte Agostinho and Others v Austriaand 32 other Member States***. The youth applicants argued that their rights protected by Articles 2, 3, 8, 14 and Article 1 of Protocol 1 of the European Convention on Human Rights are being

violated because of the states' individual and collective failure to take appropriate steps to tackle climate change. That case was ruled inadmissible by the Grand Chamber of the ECtHR on 9 April 2024. The case has been widely reported.

Marc was also instructed as lead Counsel to represent CAN-Europe in their application to intervene in the People's Climate Case which was recently determined by the Court of Justice of the European Union.

Marc was also a member of the AllRise NGO's Advisory Board at the time when it compiled and sent its communication to the Office of the Prosecutor of the International Criminal Court requesting an investigation into Brazilian President Jair Bolsonaro for his role in Crimes Against Humanity resulting from ongoing deforestation and related activities in the Amazon rainforest.

In addition, Marc has assisted Leslie Thomas KC and other members of Chambers, in advising inhabitants of the island of Barbuda in several challenges against the state including: a constitutional challenge against the government of Antigua in relation to the Barbudan's rights to their land; and a judicial review challenge by two Barbudans to the Antiguan government's decision to grant planning permission for a new airport on the island on Barbuda brought on environmental grounds. The claimants' challenge was dismissed on grounds that they lacked standing to bring the claim. That decision was the subject of a successful appeal to the Privy Council. Marc led the advocates instructed in that case and presented the argument to the Board when it was heard in November 2023. Judgment was handed down on 27 February 2024 and can be read here. The Board decided that the appellants were entitled to standing and remitted the case back to the Caribbean courts where the case will now proceed to trial. When giving judgment the privy Council made the important pronouncement on standing in environmental cases:

'57. Where an application for judicial review involves issues of environmental concern it is not necessary that the applicant demonstrates an expertise in the subject matter. All that is required is that they demonstrate some knowledge or concern for the subject. So an amateur ornithologist or bird-watcher might raise a concern about the potential loss of a bird's habitat; or a fisherman about the effect of a hydro-electric scheme on fish; or a local historian about the effect on an archaeological or historical site; or a local resident on the loss of a local beauty spot frequented by the local community. In Walton Lord Hope in effect asked the rhetorical question, "Who speaks for the ospreys?". The answer is whoever can demonstrate a genuine interest in their fate.'

NOTABLE CASES

Please see a list of Marc's notable cases below. Click here to see some of Marc's cases featured in our news feed.

KlimaSeniorinnen v Switzerland(2024)

In the first ever climate change case to be decided by the European Court of Human Rights its Grand Chamber held that the Article 8 rights of the members of the ***KlimaSeniorinnen*** protected by Articles 6 and 8 of the European Convention on Human Rights had been breached by the Swiss State in circumstances where it has failed to take the necessary steps to tackle climate change and its domestic courts had failed to determine their complaint. Marc was one of the two advocates that made oral submissions before the Court on 27 March 2023. Judgment was handed down by the Grand Chamber on 9 April 2024 (see the post for more details).

John Mussington and Jacklyn Frank v Development Control Authority and ors [2024] UKPC 3

In this case two Barbudans challenged by way of judicial review the Antiguan government's decision to grant planning permission for a new airport on the island on Barbuda. Their challenge was dismissed in the Caribbean court on grounds that they lacked standing to bring the claim. That decision was the subject of a successful appeal to the Privy Council. Marc led the advocates instructed in that case and presented the argument to the Board when it was heard in November 2023. Judgment was handed down on 27 February 2024 and can be read here. The Board decided that the appellants were entitled to standing and remitted the case back to the Caribbean courts where the case will now proceed to trial. When giving judgment the privy Council made the important pronouncement on standing in environmental cases:

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Vavan v Armenia(2021) (Application no. 50939/10), 23 September 2021

Marc was instructed in this case before the ECtHR which concerned the allegedly unlawful termination of a lease agreement relating to a plot of municipal land and the destruction of a café situated on it. The ECtHR concluded that the applicant's rights protected by Article 1 of Protocol 1 of the Convention had been breached and awarded the applicant 100,000 euros in non-pecuniary damages.

FURTHER NOTABLE CASES

More of Marc's notable earlier cases can be found here.

BACKGROUND

Away from the Bar, Marc is a member of the European Roma Rights Centre (ERRC) Board, a Trustee of Friends, Families and Travellers (FFT) and the Chair of the Advisory Board to the Travellers Equality and Justice Project (TEJP), a collaborative project between the University College Cork (UCC) School of Law and the Free Legal Advice Centre in Ireland.

PUBLICATIONS

Marc contributed to the chapter 'Climate Change Litigation before European Regional Courts: An Expert Discussion', in *Climate Change Litigation in Europe*, published by Intersentia (2024).

Co-author of Legal Action Magazine - Environmental Law: Update (October 2023)

Marc is the co-editor and co-author of a textbook entitled *Gypsy and Traveller Law* which was first published by the Legal Action Group and the Commission for Racial Equality in 2004. The 3rd edition was published in 2020.

Marc is also the editor of the Council of Europe's handbook for lawyers defending Roma and Travellers entitled *Ensuring access to rights for Roma and Travellers - The role of the European Court of Human Rights* (2014).

Marc was a contributing author to the textbook entitled*Climate Change Litigation: Global Perspectives* (2021) and wrote Chapter 13 entitled '*Climate Change Litigation in European Regional Courts: Jumping Procedural Hurdles to Hold States to Account?*'

Marc collaborated with Professor Joeri Rogelj to write a paper entitled '*Youth activists are forcing governments to take account of the intergenerational impact of climate change*'

Marc is also a regular contributor to the Legal Action Group magazine and to other legal publications, including *Justice Matters: essays from the pandemic*.

TRAINING AND SEMINARS

Marc regularly presents training on human rights and environmental law in the UK.

Marc has also undertaken a significant amount of training and advisory work on behalf of the Council of Europe and the EU, including:

"Support for Access to Justice in Armenia", specifically the development of a School for Advocates in Armenia.
Advising on reform of the Russian civil appeals procedure, legal aid and access to justice training in Pyatigorsk, Russia, for Chechen lawyers.
Advising on the Council of Europe's Human Rights Education for Legal Professionals (HELP) e-learning programme and the creation of a website educational tool on anti-discrimination.
Expert advice and presentations on civil appeals procedure in an EU project to improve civil justice in Russia.
Expert advice and presentations on civil appeals procedure in an EU project to improve civil justice in Ukraine.

In addition, Marc has undertaken a considerable number of international speaking engagements relating to human rights, environmental law and civil justice abroad, including:

The European Convention on Human Rights (ECHR) and its relevance for the protection of refugees and asylum seekers at an event organised by the UN High Commissioner for Refugees in Moscow.
The application of the ECHR in Armenia at an event organised by Interights and the Netherlands Helsinki Committee for Lawyers.
A human rights course in Rostov-on-Don, Russia, for the Council of Europe.
A course held in Tbilisi, Georgia, on religious and other forms of discrimination prohibited by the ECHR.
Roma Rights and the ECHR, on behalf of the Council of Europe at a conference organised by the Greek Ombudsman in Athens.
Delivering the keynote speech at a conference on protecting the freedom of movement and human rights of Roma in Vienna organised by the EU Fundamental Rights Agency.
Presentations on Roma rights and European discrimination law in Budapest, Bucharest and Sofia.
Speaking at a seminar on 'Gypsy Justice' on behalf of the Council of Europe at the American Bar Association conference, Dublin.
Speaking in Dublin at the Free Legal Advice Centre's conference entitled 'The EU Charter and the ECHR: Practice and Potential'
Speaking at the launch of the Mercy Law Resource Centre report *'Minority Groups & Housing Services: Barriers to Access'*
Speaking at the District of Columbia Bar's seminar entitled *'Climate Change and Human Rights: Legal Updates and Implications for Corporate Due Diligence'*
Speaking at a webinar entitled 'Following the Science: Accountability in a Time of Covid' on the provision of PPE to healthcare workers during the pandemic.
Speaking at a conference in Ankara, Turkey on the subject of how lawyers can help tackle inequality and discrimination faced by Roma and Travellers.
Marc also gave evidence in 2021 to the Joint Committee on Human Rights on the impact of the provisions of the Police, Crime, Sentencing and Courts Bill on Gypsies and Travellers and their ability to pursue their traditional nomadic way of life. Click here to download the transcript.

EDUCATION

LLB

PROFESSIONAL MEMBERSHIP

Administrative Law Bar Association (ALBA)

Planning and Environment Bar Association (PEBA)

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