



Duncan Sinclair

Year of call: 1996

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"He is really good and approachable. His written work is really good."
Chambers and Partners Global Guide 2024

"He is a very hard-working and persuasive advocate." Chambers
Global and UK Bar editions 2022

Duncan Sinclair maintains a broad practice including in judicial review, competition law, commercial disputes and public procurement which often involves technical or heavily regulated sectors (including for instance energy regulation, environmental issues, and the healthcare/pharmaceuticals and renewables sectors). Duncan has been praised by clients for his ability to grasp complex facts and issues quickly and to understand the commercial context as well as the law.

A former head of legal at the energy regulator and concurrent competition authority Ofgem, on returning to the Bar in 2010, Duncan was one of The Lawyer's "Hot 100" lawyers across the UK. Duncan acts before regulatory bodies, in judicial reviews or commercial disputes in the High Court (Queens Bench Division and Technology and Construction Court (TCC)), and before competition authorities and the Competition Appeal Tribunal (CAT). Equally, a large part of his practice involves advisory work and dispute resolution by representation (for instance in statutory or informal tribunals), with a successful outcome being achieved without the need for litigation in appropriate cases.

Areas of expertise

Administrative and Public

Commercial

Energy and Natural Resources

Environment

Commercial

"Highly recommended by market sources, and is praised for his commercial bent." Chambers and Partners 2020

Duncan's practice in this fields includes (typically energy) contractual disputes, public procurement, and competition law. Duncan is a co-author of Butterworth's Competition Law (loose-leaf) and regular

contributor to leading publications.

Areas covered

- Commercial contracts
- Competition
- Energy

Cases of note

- ***Community R4C Ltd v Gloucestershire CC* [2020] EWHC 1803 (TCC)** - In this public procurement dispute, Duncan acted for a community common interest company and established as a preliminary issue that time had not started running for some two years due to a long period of deliberate obfuscation by the county council in respect of its largest ever (over £600m) project for an energy from waste facility.
Duncan has also acted in a number of applications in the standstill period, on procurement advice, and in resisting procurement challenges.
- ***The Secretary of State for Health and ors v Lundbeck, Merck (and ors)*** [Chancery claim transferred to the Competition Appeal Tribunal and reference awaited] - This is a follow-on claim in relation to damages arising from a 'pay for delay' set of agreements between pharmaceutical companies following the upholding by the Court of Justice of the European Union (CJEU) of the EU Commission's finding of breach of Article 101 The Treaty on the Functioning of the European Union (TFEU). Duncan is lead counsel for the claimants (essentially all the relevant NHS bodies in England and Wales).
The commission decision was the first decision relating to 'pay for delay' in the context of patent infringements, an area since pursued by the Competition and Markets Authority (CMA) in the paroxetine decision and Competition Appeal Tribunal (CAT) litigation.
- ***Skyscanner Ltd v Competition and Markets Authority* [2014] CAT 16** - Duncan acted for an intervener in this case clarifying the scope of the ability of the CMA to accept undertakings in the face of an identified likely infringement of competition law.
- ***Wood Boilers LLP v Gas and Electricity Markets Authority* [2020] EWHC 3576 (admin)** - At a successful permission stage renewal for a judicial review, Duncan acted for the claimants in obtaining permission to proceed with a rolled up hearing to trial of the issues including whether a legitimate expectation (a possession under A1P1 under the HRA 1998) could defeat a provision of secondary legislation or alternatively the relevant secondary legislation must be read so as to ensure compliance.
Mr Justice Fordham opined that it was arguable (the applicable test) and even "strongly arguable" that secondary legislation must follow the primary legislation – in this instance the Human Rights Act 1998 – in the event of conflict.
The case was then settled before final hearing.
- ***National Grid Electricity Transmission PLC v ABB Ltd* [2013] EWHC 822 (Ch) [2013] U.K.C.L.R. 177** - Duncan acted for an intervening competition authority in support of this competition damages claim – an early follow on claim in the Chancery Division following the switchgear cartel.
- **(Unreported) Settled disputes** - Duncan has represented various claimants and defendants, including in interlocutory hearings and mediations, and in pleading cases which have favourably settled where the dispute has concerned, inter alia, the contractual terms of energy supply contracts.

Recommendations

Duncan has been consistently (every year since returning to the Bar in 2010) recognised as a leading practitioner in competition and energy law by clients and the leading directories.

Memberships

- British Institute of International and Comparative Law (member)
- Liberty (Patron)

Qualifications

Education

- 1991-1994 Cambridge University (Downing) Law (B.A)
- 1994-1995 Cambridge University (LL.M)
- 1995-1996 Inns of Court School of Law (Lincoln's)
- 2002 Economics (diploma) Open University

Scholarships and Prizes

- 1996 Lincoln's Inn EU Scholarship (stage in the European Commission)
- 2010 The Lawyer 'Hot 100'

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