BRICK COURT
CHAMBERS

Brick Court Chambers
7-8 Essex Street, London WC2R 3LD
DX 302 London Chancery Lane

Malcolm Birdling KC

YEAR OF CALL: ENGLAND AND WALES: 2011; NEW ZEALAND: 2005; IRELAND: 2023 **YEAR OF SILK**: 2026

"Malcolm is a superb advocate for complex issues, making them understandable and simple. He is extremely hard-working and responsive. He is a superstar, but he is so down to earth."

Chambers & Partners 2026

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Practice Overview

Malcolm Birdling KC is a specialist in public, regulatory and commercial dispute resolution.

Malcolm is ranked as a leading silk by both of the leading independent legal directories (Chambers & Partners and Legal 500), who have said that he is "*absolutely superb in the courtroom*" "*an exceptional talent*"; "*clever, a good advocate, charming and brilliant*"; "*very sharp and personable*"; and "*a highly skilled, highly experienced, tenacious advocate*" with an "*impressively broad practice encompassing both commercial and human rights claims*" who *"can hit the ground running and really get his head around a case at top speed.*"

Details of Malcolm's experience is set out by practice areas below. Before joining the English bar Malcolm, a former Fellow and Tutor in Law at the University of Oxford (Keble College), qualified as an English solicitor and at the New Zealand bar. Prior to taking silk Malcolm was one of the Attorney General's A Panel Counsel, instructed to conduct the most complex first instance and appellate advocacy for central government. Malcolm's advisory and advocacy work is enhanced by this experience, as well as his extensive track record of acting for regulators, NGOs, individuals and commercial entities; as Chambers and Partners commented, Malcolm is "*a very sensible, pragmatic and commercial barrister*" who is " *is easy to work with and just gets what clients need*."

Public Law

Malcolm Birdling KC's expertise and experience in public law is recognised by both of the leading independent legal directories each of which has listed Malcolm as a leading public law silk, describing him as "*a very strong public law practitioner*" (Chambers & Partners) and "*a frighteningly clever public law barrister*" (Legal 500).

Malcolm has been a member of the Executive Committee of the Constitutional and Administrative Law Bar Association for over a decade and his public law experience spans a broad range of subject areas including **commercial judicial review** (e.g. *Stagecoach v Greater Manchester Combined Authority*; *Utilita Energy v BEIS*), **subsidy control** (e.g. *British Sugar*; *Bulb/Octopus*), **public procurement** (e.g. *Camelot/IGT*; *New Lottery Company),* **sanctions** (e.g. *Shvidler, Fridman, Evtushenkova),* **discrimination** (e.g. *Alhasan v LC*; *IWUGB v Mayor of London*), **public international law** (e.g. *Kanu v SSFCDA*, *Sandiford v SSFCDA*), **environmental** (e.g. *Global Feedback v HMT; Wild Justice v NRW*), **education** (e.g. *R. (CWJ) v Lord Chancellor*), **financial regulation** (e.g. *Options UK v FOS; Holmcroft v FCA*), **media and advertising** (e.g. *J Sainsbury's Ltd v Advertising Standards Authority*), **immigration** (e.g. *G v G*; *Gudanaviciene; Ibori v SSHD*), **aviation** (*Gatwick Airport v SST*; *Friends of the Earth v Heathrow Airport*; *Monarch Airways v ACL;* Heathrow H7 appeals), **gaming** (e.g. *EU Lotto v DCMS*, 4th National Lottery Licence litigation), **pharmaceutical and food regulation** (e.g. *Gullin v FSA*; *Newby Foods v FSA*), **criminal justice** (e.g. *R v Pora*, *R v Lundy*, *Collins v Justice Secretary*) and **civil liberties and human rights** (e.g. *Detention Action v Lord Chancellor*; *Barda v Mayor of London*).

Malcolm acts for claimants, defendants and NGOs in public law and human rights cases before the English Courts, the EU Courts and the European Court of Human Rights. Examples of his recent significant or reported cases are:

- *R. (Association of Independent Meat Suppliers) v Food Standards Agency* [2026] EWHC 1327 (Admin) successful challenge to levies charged to food business operators by the Food Standards Agency in relation to the exercise of official controls.
- *R (Gatwick Airport Ltd) v Secretary of State for Transport* [2026] EWHC 1733 (Admin) highly expedited urgent judicial review challenge to secondary legislation relaxing slot usage requirements at UK airports.
- *The New Lottery Company Limited and Northern & Shell PLC v The Gambling Commission & Allwyn* [2026] EWHC 891 (TCC) (one of "The Lawyer's" top cases of 2025) – successful defence of public procurement challenge to award of licence to operate the National Lottery.
- *Evtushenkova v Secretary of State for Foreign, Commonwealth and Development Affairs* (Administrative Court, 2025) successful application for de-listing of individual designated under the Sanctions and Anti-Money Laundering Act 2018 (Government conceded claim immediately prior to trial).
- *PJSC VTB Bank v HM Treasury* [2025] EWHC 3359 (Admin) acting for Administrators of VTB Capital in successful defence to challenge to licence authorising the distribution of assets to VTB Capital's creditors.
- *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] 3 WLR 346 – acting for the Claimant in High Court, Court of Appeal and Supreme Court in the

first substantive challenge to an individual designation under the Russia (Sanctions) (EU Exit) Regulations 2019.

- *R. (Abacus & Ors) v Secretary of State for Housing, Communities and Local Government* [2025] EWHC 2751 (Admin) – acting for Claimant group in challenge to leasehold enfranchisement provisions of the Leasehold and Freehold Reform Act 2024 (appeal to be heard by the Court of Appeal in 2027).
- *Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point* [2025] EWCA Civ 856*;* [2025] HLR 43 – challenge to retrospective application of Building Safety Act 2022 (appeal to be heard by Supreme Court in 2026).
- *HM Treasury v Global Feedback Ltd* [2025] EWCA Civ 624; [2025] 4 All ER 187 – scope of Aarhus Convention costs protection rules (appeal to be heard by the Supreme Court in 2026).
- *R. (Caterpillar (Xuzhou) Ltd) v Secretary of State for Business and Trade* [2025] EWHC 1124 (Admin) – successful defence of challenge to anti-dumping measures imposed on Chinese-manufactured excavators.
- *R. (Rettig Heating Group UK Ltd (In Liquidation)) v Revenue and Customs Commissioners* [2025] STC 871; [2025] BTC 519 – successful defence to judicial review challenge to exercise of discretion under the Finance Act 1996 Pt IV s.83(6) regarding set-off of non-trading loan relationship deficit against profits.
- *R. (HJK & Ors) v Director of Legal Aid Casework* [2025] 1 WLR 3740 – concerning scope of ECHR procedural protections applicable to victims of trafficking pursuing compensation from the Criminal Injuries Compensation Scheme.
- *R. (British Gas Trading Ltd) v Secretary of State for Energy Security and Net Zero* [2025] 1 WLR 3342 (CA) – successful defence of subsidy control challenge to Government support offered during insolvency of Bulb Energy and takeover by Octopus Energy.
- *R. (CWJ) v Lord Chancellor & Anor* [2025] EWHC 306 (Admin) – successful defence of judicial review challenge concerning scope of procedural rights in school exclusion appeals.
- *Dana Astra IOOO v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] EWHC 289 (Admin) – sanctions de-listing challenge concerning whether designation by Foreign Secretary brings an entity within the UK's jurisdiction for the purposes of the ECHR.
- *R. (LJ Fairburn & Son Ltd) v Secretary of State for Environment, Food and Rural Affairs* [2025] PTSR 1128 (CA) challenge to Government's operation of compensation scheme for poultry slaughtered for purposes of disease prevention.
- *R. (Naasani) v Secretary for Foreign, Commonwealth and Development Affairs* [2025] 4 WLR 2 – successful defence of challenge to lawfulness of the Syria (Sanctions) (EU Exit) Regulations 2019.

- *R. (The Humane League UK) v Secretary of State for Environment, Food and Rural Affairs & National Farmers' Union* [2024] EWCA Civ 1560 acting for National Farmers Union in successfully resisting challenge to the lawfulness of Secretary of State's animal welfare policies.
- *R. (Alhasan) v Lord Chancellor* [2025] 1 WLR 2067 – availability of legal aid for representation at asylum interviews.
- *R. (Oji) v Director of Legal Aid Casework* [2024] 4 WLR 53 – applicability of ECHR procedural rights to applications under the Windrush Compensation Scheme.
- *R. (Options UK Personal Pensions LLP) v Financial Ombudsman Service Ltd* [2025] 2 All ER 399 (CA) acted (led by Jemima Stratford KC) for FCA in successful defence of challenge to application of its "Principles for Businesses" in determining eligibility for redress under the FSMA "fair and reasonable" jurisdiction.
- *R. (Guilin GFS Monk Fruit Corp) v Food Standards Agency* [2024] EWHC 614 (Admin) successful challenge to FSA's determination that Monk Fruit was a "novel food".
- *Phillips v Secretary of State for Foreign, Commonwealth and Development Affairs* [2024] 1 WLR 2227 – interface between right to freedom of expression and imposition of economic sanctions.
- *International Game Technology Plc v Gambling Commission* [2024] PTSR 65 – acting for successful tenderer in trial of preliminary issue determining that sub-contractor of an unsuccessful bidder in a public procurement process had no standing under the Concession Contracts Regulations 2016 to challenge the award of the contract to the successful bidder or to seek damages.
- *R. (Kanu) v Secretary of State for Foreign, Commonwealth and Development Affairs* [2023] EWCA Civ 796 – acting for Secretary of State in successful defence to judicial review challenge concerning the assistance provided to a British national allegedly unlawfully rendered to Nigeria.
- *R. (CR) v Lord Chancellor* [2023] EWCA Civ 717; [2023] Costs L.R. 961 – appearing (leading Sophie Bird) for successful Respondent to this appeal concerning the principles applicable on applications to set aside judicial review costs capping orders.
- *R. (Fridman) v HM Treasury* [2023] EWHC 2657 (Admin) – concerning proper scope of OFSI's licensing powers in respect of designated person's funds.
- *G v G* [2022] A.C. 544 – acting for the United Nations High Commission for Refugees in this significant Supreme Court appeal concerning the interaction between the 1980 Hague Convention and the Refugee Convention.
- *R. (on the application of Newby Foods Ltd) v Food Standards Agency* [2022] 4 W.L.R. 90 – acting for the Food Standards Agency (leading Emma Mockford) in successful defence to judicial review challenge concerning proper classification of meat products.

- *R. (on the application of British Sugar Plc) v Secretary of State for International Trade* [2022] EWHC 393 (Admin) acting (led by Marie Demetriou KC) for British Sugar in the first challenge brought under the post-Brexit subsidy control regime, involving (amongst other things) the proper approach to the state aid rules under the Northern Ireland Protocol.
- *R. (on the application of Garrett) v Legal Aid Agency* [2022] EWHC 1258 (Admin) acting for successful Defendant to judicial review claim concerning availability of public funding for SRA regulatory proceedings.
- *R. (on the application of Detention Action) v Lord Chancellor* [2022] EWHC 18 (Admin) – acting (leading Aarushi Sahore) in successful defence of systemic challenge to operation of system for provision of legal aid to those in immigration detention.
- *Greater Manchester Buses South Ltd v Greater Manchester Combined Authority* [2022] EWHC 506 (Admin) acting (led by Marie Demetriou KC) for Stagecoach in judicial review challenge to introduction of bus franchising scheme in Manchester.
- *R. (Youssef) v Secretary of State for Foreign, Commonwealth and Development Affairs* [2022] 1 W.L.R. 2454 – acting (led by Maya Lester KC) for Secretary of State in successful defence to the first challenge to the post-Brexit sanctions regime established under the Sanctions and Anti-Money Laundering Act 2018.
- Malcolm represented the Transitional Government of Tamil Eelam in their successful appeal to the Proscribed Organisations Appeal Commission ('POAC') against the decision of the Home Secretary to refuse their application to remove the Liberation Tigers of Tamil Eelam ('the LTTE') from the list of organisations proscribed under the Terrorism Act in the UK.
- *Wild Justice v Natural Resources Wales and the Secretary of State for the Environment Food and Rural Affairs* [2021] Env LR 24 – representing the National Farmers' Union before the Administrative Court, which confirmed the lawfulness of general licences issued under the Wildlife and Countryside Act 1981 for the control of wild birds, and the compatibility of this regime with EU environmental law.
- *R (Friends of the Earth Ltd and another) v Heathrow Airport Ltd* [2021] PTSR 190 (SC) – acting for the successful appellant before the Supreme Court, overturning the Court of Appeal's finding that the Secretary of State's decision to favour the development of a third runway at Heathrow Airport was unlawful because of an alleged failure adequately to consider the United Nations Framework Convention on Climate Change (the Paris Agreement).
- *Regina (GR) v Director of Legal Aid Casework* [2021] 1 WLR 1483 – acting for the Director of Legal Aid Casework in this case in which the Court issued guidance as to how regulations setting out the "means test" for legal aid eligibility fell to be construed in circumstances where a strict application would risk breaches of the European Convention on Human Rights.
- *Neslen v Evans* [2021] EWHC 1909 – acting in challenge to Labour Party disciplinary proceedings.

- *R (Sarikaya) v Secretary of State for Health and Social Care* [2021] EWHC 1958 – acting (unled) for Secretary of State in judicial review challenge concerning exceptions to Covid-19 quarantine requirements.
- *R (Khalid & Ors) v Secretary of State for Health and Social Care & Ors* [2021] EWHC 2156 (Admin) acting (unled) for Secretary of State in successful defence of challenge to quarantine requirements imposed on those travelling from "red list" countries during the Covid-19 Pandemic.

EU law

Malcolm Birdling KC has an extensive EU law practice, both in the English Courts (concerning the application of retained-EU law post-Brexit) and before the Courts of the European Union where (as a dual qualified Irish and English barrister) Malcolm remains qualified to appear. Chambers & Partners has noted Malcolm's "*strong track record*" in EU law cases, as well as his "*in-depth knowledge of EU law*".

Examples of Malcolm's recent EU law experience and instructions include:

- Case T-437/23 *Hala Almaghout v Council of the European Union* ECLI:EU:T:2025:701 – successful challenge to an individual designation under Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria.
- Case T▌426/21 *Nizar Assaad v Council of the European Union* ECLI:EU:T:2023:114 – successful challenge to an individual designation under Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria.
- Case T▌239/21 *Dana Astra IOOO v Council of the European Union* ECLI:EU:T:2023:364 – challenge to designation under Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus.
- *R. (on the application of British Sugar Plc) v Secretary of State for International Trade* [2022] EWHC 393 (Admin) acting for British Sugar in the first challenge before the English courts concerning alleged breaches of the Trade and Co-Operation Agreement between the UK and the EU, involving (amongst other things) the proper approach to the state aid rules under the Northern Ireland Protocol.
- C-359/18P *EMA v Shire Pharmaceuticals Ireland* – acting for successful applicant in this action for annulment in which the Court of Justice (upholding the decision of the General Court) provided important guidance as to the approach which ought to be taken by the European Medicines Agency ("EMA") in respect of applications for designation as an "orphan medicinal product" pursuant to the terms of Regulation (EC) No 141/2000.
- *R (EU Lotto Ltd) v Secretary of State for Digital, Culture, Media and Sport* [2019] 1 CMLR 41 – acting for the Claimants in this Article 56 TFEU challenge to the lawfulness of a ban imposed

by secondary legislation on certain types of betting.

- C-267/16 *Buhagiar & Ors v Minister for Justice* [2018] 2 CMLR 30 - appearing before the Grand Chamber of the Court of Justice of the European Union on behalf of the United Kingdom government on this reference concerning the scope of Gibraltar's exclusion from the common customs union and the TFEU provisions on free movement of goods.
- E-15/16 *Yara International ASA v Norway* [2018] 1 CMLR 25 – acting (unled) for the United Kingdom Government in this significant EFTA Court reference concerning the compatibility of Norweigan tax rules relating to intra-group transfers with EEA law.
- *R (Monarch Airlines) v Airport Coordination Ltd* [2018] 1 Lloyd's Rep 549 (CA) - successfully acting for the Administrators of Monarch Airlines in this leading case on the application of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports.
- *Accord Healthcare Ltd and another v Astellas Pharma GmbH and another* [2018] 1 CMLR 17.
- *Merck Sharp & Dohme Corp v Comptroller-General of Patents, Designs and Trade Marks* [2017] RPC 2 (Ch). Acting in this significant case concerning the correct interpretation of the supplementary protection certificate regulation, subsequently confirmed on reference to the CJEU.

Sanctions

Malcolm Birdling KC has considerable expertise in the law relating to economic sanctions. Malcolm is ranked as a leading sanctions silk by both of the top independent legal directories, with Chambers and Partners describing him as a *"superb advocate for complex issues"* who is *"extremely hard-working and responsive"*, concluding that he *"is a superstar, but he is so down to earth"* ; Legal 500 described Malcolm as " *incomparable in the sanctions space* ", commenting that there " *is nothing he does not know, and no ask is too tall* " and that he is " *an exceptional advocate with an unrivalled work ethic*."

Malcolm's recent UK sanctions experience includes:

- *PJSC VTB Bank v HM Treasury* [2025] EWHC 3359 (Admin) acting for Administrators of VTB Capital in successful defence to challenge to licence authorising the distribution of assets to VTB Capital's creditors. Appeal to the Court of Appeal to be heard in 2026.
- *Evtushenkova v Secretary of State for Foreign, Commonwealth and Development Affairs* (Administrative Court, 2025) successful application for de-listing of individual designated under the Sanctions and Anti-Money Laundering Act 2018 (Government conceded claim immediately prior to trial). Malcolm also acted for Igor Makarov in proceedings which secured his de-listing with immediate effect in 2024.

- *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] 3 WLR 346 – acting for the Claimant in High Court, Court of Appeal, and Supreme Court in the first substantive challenge to an individual designation under the Russia (Sanctions) (EU Exit) Regulations 2019.
- *R. (Naasani) v Secretary for Foreign, Commonwealth and Development Affairs* [2025] 4 WLR 2, successful defence of challenge to provisions of the Syria (Sanctions) (EU Exit) Regulations 2019.
- *Fractal Marine DMCC v Secretary of State for Foreign, Commonwealth and Development Affairs* [2024] EWHC 3676 (Admin), scope of Court's jurisdiction to grant interim relief in challenge to designation.
- *Dana Astra IOOO v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] EWHC 289 (Admin) – sanctions de-listing challenge concerning whether designation by Foreign Secretary brings an entity within the UK's jurisdiction for the purposes of the ECHR.
- *R. (Fridman) v HM Treasury* [2023] Lloyd's Rep. F.C. 493, successful defence to challenge to refusal of licences to designated individual.
- *Phillips v Secretary of State for Foreign, Commonwealth and Development Affairs* [2024] 1 WLR 2227, successful defence of challenge contending that designation of a British national pursuant to the Sanctions and Anti-Money Laundering Act 2018 unlawfully interfered with his rights to freedom of expression under ECHR art.10, respect for his private and family life under art.8, or the peaceful enjoyment of his possessions under Protocol 1 art.1.
- *R. (Youssef) v Secretary of State for Foreign, Commonwealth and Development Affairs* [2022] 1 WLR 2454, successful defence of challenge to UK regime for review of United Nations terrorist sanctions.

Malcolm's recent EU sanctions experience includes:

- Case T-91/25 - *Troost v Council* – secured de-listing of individual designated under Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (European Council agreed to de-list Mr Troost immediately before the General Court hearing).
- Case T-437/23 *Hala Almaghout v Council of the European Union* ECLI:EU:T:2025:701 – successful challenge to an individual designation under Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria.
- Case T▌426/21 *Nizar Assaad v Council of the European Union* ECLI:EU:T:2023:114 – successful challenge to an individual designation under Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria.

- Case T▉239/21 *Dana Astra IOOO v Council of the European Union* ECLI:EU:T:2023:364 – challenge to designation under Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus.

Commercial

Malcolm Birdling KC specialises in those aspects of commercial dispute resolution involving a public, regulatory, human rights or international law element. Examples of Malcolm's recent experience in commercial matters includes:

- *The New Lottery Company Limited and Northern & Shell PLC v The Gambling Commission & Allwyn* (eight-week TCC trial; one of "The Lawyer's" top cases of 2025) – acting for successful tenderer in defending a public procurement challenge to the award of National Lottery, including in securing award of indemnity costs: [2026] EWHC 1311 (TCC).
- *PJSC VTB Bank v HM Treasury* [2025] EWHC 3359 (Admin) acting for Administrators of VTB Capital in successful defence to challenge to licence authorising the distribution of assets to VTB Capital's creditors. Appeal to be heard by the Court of Appeal in 2026.
- *Bodorgan Properties (C.I.) Limited v Southern Electric Power Distribution Plc* [2025] EWHC 1880 (KB) – successful application for strike out / summary judgment.
- *The Federal Republic of Nigeria v Process and Industrial Developments Ltd* [2025] EWCA Civ 715 – successfully resisting appeal by non-party seeking removal of critical findings made of his conduct and evidence in judgment which led to the setting aside of the US $11 billion arbitration awards that had been obtained against the Federal Republic of Nigeria.
- *International Game Technology Plc v Gambling Commission* [2024] PTSR 65 – acting for successful tenderer in trial of preliminary issue determining that sub-contractor of an unsuccessful bidder in a public procurement process had no standing to challenge the award of the contract to the successful bidder or to seek damages.
- Acting in confidential LCIA arbitration in natural resources sector (2023 – 2026).
- Acting in confidential LCIA arbitration in aviation sector (2020 – 2021).
- Advising multinational technology company throughout Competitions and Markets Authority investigation into the fairness and lawfulness of its consumer contracts and practices.
- *viagogo AG v Competition and Markets Authority* [2020] ECC 5 (Ch) – acting for viagogo AG throughout consumer law proceedings.
- *Elite Property Holdings Ltd v Barclays Bank PLC* [2019] Bus LR 129 (CA) – concerning whether bank under a contractual obligation to its customers in relation to its conduct of a review of consequential losses for misselling of IRHPs.
- *Lifestyle Equities & Anor v Sports Direct International PLC & Ors* [2018] EWHC 728 (Ch);

[2018] ETMR 25, Chancery Division trial of claim for damages for inducing a breach of contract and trademark infringement.

- Successfully appearing unled before the Court of Appeal in *British Gas Trading Ltd v Oak Cash and Carry* [2016] 1 WLR 4530. The decision below, where Malcolm also appeared unled is reported at [2015] 1 All ER (Comm) 1000 and [2014] 6 Costs L.R. 1122.
- *Bimini Blue Coalition Ltd v Prime Minister of The Bahamas & Ors* [2014] UKPC 23 - appearing before the Judicial Committee of the Privy Council in this appeal involving an appeal against the refusal of interim relief in judicial review proceedings to restrain development works, the legality of which was the subject of the underlying proceedings.
- Acting as sole junior counsel for the Claimants in Hong Kong seated international arbitration relating to a dispute arising under a Directors' and Officers' liability insurance policy.
- *Watson v Sadiq & Anor* [2013] EWCA Civ 822 – Appeal to Court of Appeal concerning whether a settlement contained in a Tomlin Order may be set aside on the basis that trial judge 'entered the arena' and exerted undue and inappropriate pressure on the Claimant to enter into a settlement agreement.

International Human Rights Law

Malcolm Birdling KC is ranked as a leading international human rights law silk by both Chambers and Partners and Legal 500. Malcolm has extensive experience acting for Government bodies, private individuals, commercial entities, NGOs and public interest groups across a broad spectrum of international human rights work before both international and domestic tribunals.

Examples of Malcolm's recent instructions include:

- Acting for applicants to European Court of Human Rights in claims arising out of their sanctions designations.
- Successfully acting for applicant to European Court of Human Rights in series of claims concerning violations of Convention right to freedom of expression in context of conflict in Ukraine (2022 – 2026).
- *G v G* [2021] UKSC 9 – acting for the United Nations High Commission for Refugees in this significant Supreme Court appeal concerning the interaction between the 1980 Hague Convention and the Refugee Convention.
- Advising UK Government bodies as to the human rights implications of the United Kingdom's withdrawal from the European Union.
- Representing the Transitional Government of Tamil Eelam in their successful appeal to the Proscribed Organisations Appeal Commission ('POAC') against the decision of the Home Secretary to refuse their application to remove the Liberation Tigers of Tamil Eelam ('the

LTTE') from the list of organisations proscribed under the Terrorism Act in the UK.

- *Sophocleous & Others v Secretary of State for the Foreign and Commonwealth Office, Secretary of State for Defence* [2019] QB 949 (CA) – acting for the Claimants throughout these proceedings concerning the United Kingdom Government's liability for acts of torture allegedly committed by the British Army and colonial forces during the "Cyprus Emergency" of the 1950s. The matter had been set down for trial with a time estimate of up to 115 days before it was settled by the UK Government's agreement to pay a settlement sum of £1,000,000 in damages together with the Claimants' legal costs.
- Acting for applicant to European Court of Human Rights in case concerning compatibility of English "householder defence" law with the European Convention on Human Rights.

Malcolm is also ranked as a leading silk by both independent legal directories in respect of his domestic civil liberties and public law work, which often involves issues at the intersection of civil liberties and public international law, including, for example, the extent of the UK Government's obligations towards victims of trafficking (*R. (HJK & Ors) v Director of Legal Aid Casework* [2025] 1 WLR 3740; *R (Tirkey) v Lord Chancellor* [2018] 1 WLR 2112; the interface between extradition and asylum obligations *R (Troitino) v National Crime Agency v Secretary of State for the Home Department* (Divisional Court) and the extent of the United Kingdom's obligations under the European Convention on Human Rights to British nationals imprisoned abroad (*R (Sandiford) v Secretary of State for Foreign and Commonwealth Affairs* (Supreme Court).

Malcolm's doctoral thesis concerned the correction of miscarriages of justice and he has considerable experience in bringing claims before the Judicial Committee of the Privy Council in respect of suspected miscarriages of justice from Commonwealth jurisdictions. Reported cases include *Pora v R*; *Lundy v R* and *Taylor v R.*

Public international law

Malcolm has considerable experience advising private individuals and bodies, NGOs and Government bodies in relation to public international law issues across a broad range of subject matter including sanctions, international aviation, trade and tariffs, revocation of citizenship, transit of goods, taxation and terrorist proscription.

Recent significant cases include:

- Successfully acting for applicant to European Court of Human Rights in series of claims concerning violations of Convention right to freedom of expression in context of conflict in Ukraine (2022 –2026).
- *R. (on the application of Kanu) v Secretary of State for Foreign, Commonwealth and Development Affairs* [2023] EWCA Civ 796 – acting for Secretary of State in challenge

concerning alleged breaches of public international law in context of alleged unlawful rendition of a British citizen to Nigeria.

- *R (Friends of the Earth Ltd and another) v Heathrow Airport Ltd* [2021] PTSR 190 (SC) –Supreme Court decision considering impact of the United Kingdom's ratification of the United Nations Framework Convention on Climate Change (the Paris Agreement) on domestic aviation policy.
- G v G [2021] UKSC 9 – acting for the United Nations High Commission for Refugees in this significant Supreme Court appeal concerning the interaction between the 1980 Hague Convention and the Refugee Convention.
- Malcolm represented the Transitional Government of Tamil Eelam in their successful appeal to the Proscribed Organisations Appeal Commission ('POAC') against the decision of the Home Secretary to refuse their application to remove the Liberation Tigers of Tamil Eelam ('the LTTE') from the list of organisations proscribed under the Terrorism Act in the UK.
- Sophocleous & Others v Secretary of State for the Foreign and Commonwealth Office, Secretary of State for Defence [2019] QB 949 (CA) – acting for the Claimants throughout these proceedings concerning the United Kingdom Government's liability for acts of torture allegedly committed by the British Army and colonial forces during the "Cyprus Emergency" of the 1950s.
- Acting for applicant to European Court of Human Rights in case concerning compatibility of English "householder defence" law with the European Convention on Human Rights.

Prior to taking silk, Malcolm was a Member of the Attorney General's A panel of counsel, in which capacity he regularly advised the UK Government in relation to its international law rights and obligations, including those arising out of European and International Human Rights law, the EU-UK Withdrawal Agreement and other international instruments entered into to facilitate the United Kingdom's withdrawal from the European Union.

Publications

- "The Man in 'Entry 36': Legitimate Expectations, Legal Certainty and Economic Sanctions." European Law Blog, July 2024: https://doi.org/10.21428/9885764c.8174a02e
- Co-Author, Competition Law: General Principles in Vaughan and Robertson's Encyclopaedia of EU Law (Oxford University Press, 2014).
- "Correcting Miscarriages of Justice" New Zealand Law Journal (2013) p413ff.
- "Correction of Miscarriages of Justice in New Zealand and England " (DPhil thesis, University of Oxford)
- "Delays and Stays" New Zealand Law Journal (2009), p253 ff (Co-Author with Zannah

Johnston, University of Toronto).

- "Self Incrimination comes to Strasbourg" International Journal of Evidence & Proof (Vol 12, 2008), p58 ff.
- "Filtering and the International System: A Question of Commitment" in *Access Denied: The Practice and Policy of Global Internet Filtering* (MIT Press, 2008) (Co-Author with Mary Rundle, Stanford University).
- "Healing the Past or Harming the Future? Large Natural Groupings and the Waitangi Settlement Process" New Zealand Journal of Public and International Law (Vol 2, No 2 2004), p259 ff.
- *Making Sense of the Foreshore and Seabed* (Wellington, 2004) (Co-Author with Tom Bennion and Rebecca Paton).

Career & Qualifications

- Barrister-at-law, Ireland (2023)
- Doctor of Philosophy in Law, University of Oxford
- Master of Philosophy in Law, University of Oxford
- Bachelor of Civil Law (Distinction), University of Oxford
- Bachelor of Arts in Political Science / Bachelor of Laws (1^{st}), Victoria University of Wellington
- Barrister (Inner Temple) Called 2011
- Barrister (New Zealand) Called 2005 (currently non-practising)
- Solicitor of the Senior Courts of England and Wales (Non-Practising)
- Overseas Scholarship, St Catherine's College, University of Oxford (2008)
- Sir Rupert Cross Prize for the Law of Evidence, University of Oxford (2007)
- Cleary Memorial Award, New Zealand Law Society (2006)
- Rhodes Scholarship (2005)
- Quentin Baxter Prize for International Law, Victoria University of Wellington (2003)
- Student Trust Scholarship, Victoria University of Wellington (2003)
- Mario Patrono Scholarship, Victoria University of Wellington (2000)
- Faculty of Law Prize, Victoria University of Wellington (1999)

Directory Quotes

- "He is an excellent strategic thinker." (Chambers & Partners 2027)

- "He is always prompt, he's clearly across his briefs and is a really good human rights lawyer. His written advocacy is brilliant and his drafting is excellent and detailed and really thorough. He is a really good public law advocate, is incredibly strong on strategy and is very good on client relations too." (Chambers & Partners 2027)

- "Malcolm is probably one of the mot approachable barristers at the public law bar. There is no question too small or too stupid, he always takes the time to explain complex issues in a digestible way and is very generous with his time, knowledge and expertise in ensuring that everyone is able to develop as lawyers and get the right outcome. He stands out for exceptional drafting work and and he is also a very strong advocate who is clearly respected by the judiciary." (Chambers & Partners 2027)

- "Malcolm is very good: he's a good strategic thinker whose advice and judgement I respect. I really like him." (Chambers & Partners 2027)

- "Very smart and brainy, Malcolm is hard-working and turns work around with great speed." (Chambers & Partners 2027)

- "He's an outstanding advocate." (Chambers & Partners 2027)

- "I'm a big fan of Malcom. He's perpetually cheery no matter how difficult the case, very bright and very easy to deal with." (Chambers & Partners 2027)

- "Malcolm is brilliant. He is so direct, and he doesn't get flustered; he just tells you his view. He has a very good writing style as well." (Chambers & Partners 2027)

- "He is incredibly responsive and very impressive. Malcolm understands how government works and how to frame and pull the issues to get the best responses from government. So he brings a strategic approach but has a real eye for detail too, and that combination is really

powerful." (Chambers & Partners 2027)

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- "Malcolm is clever, hard-working and very focused. He is great." (Chambers & Partners 2027)
- "Malcolm is very good. He is energetic, enthusiastic and nice to work with." (Chambers & Partners 2027)
- "Malcolm Birdling KC is an overdue appointment to Silk. He is one of the best barristers at the sanctions bar, is commercial, clever, and simply knows everything. He has a phenomenal legal mind and in-depth knowledge of sanctions frameworks. He is a go-to barrister in de-listing challenges with good reason, and he is a total delight to work with." (Legal 500 2027)
- "Excellent at developing strong legal arguments. Very strong and experienced in judicial reviews, including in the aviation sector. Easy to work with." (Legal 500 2027)
- "I think Malcolm is excellent - he is highly responsive, sympathetic to solicitors' needs, insightful, a rapid reviewer of papers, and is able to form quick and accurate judgments." (Legal 500 2027)
- "Malcolm is rightly regarded as a go-to sanctions junior. He is truly fantastic." (Chambers & Partners 2026)
- "Malcolm Birdling is absolutely superb in the courtroom." (Chambers & Partners 2026)
- "Malcolm would be my number one choice for this kind of work." (Chambers & Partners 2026)
- "Malcolm is totally 100% at the top of his game." (Chambers & Partners 2026)
- "Malcolm Birdling is a superstar and I can see him on the Supreme Court bench in due course." (Chambers & Partners 2026)
- "Malcolm is definitely a future star in this area." (Chambers & Partners 2026)
- "Malcolm provides very clear and lucid drafting, and has great knowledge." (Chambers & Partners 2026)
- "Malcolm is very impressive. He is very clever and tactical, both in terms of the law and in court." (Chambers & Partners 2026)
- "Malcolm Birdling is superb." (Chambers & Partners 2026)
- "Malcolm is a superb advocate for complex issues, making them understandable and simple.

He is extremely hard-working and responsive. He is a superstar, but he is so down to earth." (Chambers & Partners 2026)

- "Malcolm is able to articulate difficult and nuanced points with a passion. He is incredibly responsive and very approachable." (Chambers & Partners 2026)
- "Malcolm Birdling has extensive experience acting in challenges to designations and to the UK sanctions regime itself. Birdling has represented individuals, financial institutions and government departments in such matters." (Chambers & Partners 2026)
- "Malcolm Birdling is a leading junior at Brick Court Chambers with significant skills in contentious issues, including regulatory litigation. He has a strong track record in cases involving the Food Standards Agency, judicial review challenges and EU law." (Chambers & Partners 2026)
- "Malcolm Birdling is a respected barrister who is regularly called upon to appear before all levels of court in complex human rights cases. He is recognised for his in-depth knowledge of EU law and takes on work concerning false imprisonment, terrorism and complicated claims of torture and ill-treatment dating back to the 1950s. His practice is aided by his former experience as both an English solicitor and a member of the New Zealand Bar." (Chambers & Partners 2026)
- "Malcolm Birdling is sought out to act in novel public law cases and has an impressively broad practice encompassing both commercial and human rights claims. He is a member of the Attorney General's A Panel and the EHRC's panel of counsel. Recent mandates include challenges to contentious infrastructure projects, immigration cases and matters arising from the UK sanctions regime." (Chambers & Partners 2026)
- "Malcolm's advocacy was the best I've ever seen." (Chambers & Partners 2026)
- "Malcolm is definitely a future star in this area." (Chambers & Partners 2026)
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- "Malcolm is a strong tactician. He is really brilliant and punchy with his arguments." (Chambers & Partners 2026)
- "Malcolm is a very strong public law practitioner." (Chambers & Partners 2026)
- "Malcolm has an encyclopedic knowledge of public law concepts and cases and has a very persuasive written style." (Legal 500 2026)
- "A clear thinker, with an ability to explain and present complex legal principles in plain English.

Measured in his advocacy and is excellent at reading the mood of a Court. Clients particularly like his pragmatism when approaching what can at times seem like insoluble problems." (Legal 500 2026)

- "Malcolm is incomparable in the sanctions space. He is, without doubt, the best junior and is a silk in waiting. There is nothing he does not know, and no ask is too tall. An exceptional advocate with an unrivalled work ethic. There simply are not enough superlatives." (Legal 500 2026)
- "Malcolm is a pleasure to be up against. He is both genial and pragmatic." (Chambers & Partners 2025)
- "Malcolm has good insight into how courts will approach cases." (Chambers & Partners 2025)
- "He is very knowledgeable about EU subsidy law and has a superb tactical sense." (Chambers & Partners 2025)
- "Malcolm is an ingenious, highly intellectual and persuasive advocate." (Chambers & Partners 2025)
- "He's a hugely impressive advocate." (Chambers & Partners 2025)
- "Malcolm is a hugely impressive advocate who's at the top of his game. He's brilliant in conferences; a real standout junior at the sanctions Bar." (Chambers & Partners 2025)
- "Malcolm is the new sanctions star - a real KC in the making." (Chambers & Partners 2025)
- "Malcolm is an excellent, client-friendly and above all, pragmatic advocate." (Chambers & Partners 2025)
- 'He enjoys the intellectual challenge of a difficult case, and he easily applies his deep knowledge of the law to the facts of his cases, and the issues in dispute.' (Legal 500 2025)
- ‘Malcolm is a ferociously bright public law barrister. His understanding of public law concepts is outstanding, and his drafting of appeal documentation is absolutely brilliant.’ (Legal 500 2025)
- ‘Malcolm is a go-to junior for this work. His work for both individuals and government in this area means he has an amazing breadth and depth of knowledge of both the law and practice.’ (Legal 500 2025)
- "Malcolm is great to work with and he is razor-sharp." (Chambers & Partners 2024)
- "He is very responsive and his advice is very pragmatic and practical." (Chambers & Partners 2024)
- "An exceptional track record in providing top-tier legal advice and representation to both government entities and individuals." (Chambers & Partners 2024)
- "He is incisive and smart and I value his common sense and judgement." (Chambers & Partners 2024)

- "Malcolm is one of the go-to juniors for sanctions work. His drafting is superb, and his understanding of the relevant regulations is unrivalled." (Chambers & Partners 2024)
- "He demonstrated a real depth of knowledge in the area; he's a formidable opponent for that reason but it is a pleasure to be on the right side of him. An excellent human rights and public lawyer." (Chambers & Partners 2024)
- "Malcolm is a frighteningly clever public law barrister. His drafting of the pleadings was excellent and he had a keen strategic sense of what the Supreme Court would find persuasive. His legal research was also excellent." (Legal 500 2024)
- "An exceptionally bright and articulate junior." (Legal 500 2024)
- "Malcolm is someone who really knows not only his public law principles but ECHR rights, too. He is very good at navigating principles and knowing how they apply." (Chambers & Partners 2023)
- "He is extremely innovative and hard-working - a fantastic junior to work with." (Chambers & Partners 2023)
- "He is very experienced, intelligent and responsive. He turns things around very swiftly and is excellent at communicating to the right audience." (Chambers & Partners 2023)
- "With an encyclopedic knowledge of administrative law, Malcolm is one of the top juniors in the field. His precise and effective drafting is so powerful that cases can be won before even getting to court. A great strategic brain." (Legal 500 2023)
- "Superb drafting in complex legal cases and identifying the strongest points to run with." (Legal 500 2023)
- "He's a very sensible, pragmatic and commercial barrister who takes well-considered and well-argued points." "He is easy to work with and just gets what clients need." (Chambers & Partners 2022)
- "Malcolm has really good attention to detail and he is very thorough." (Chambers & Partners 2022)
- "Superb drafting in complex legal cases and identifying the strongest points to run with." (Legal 500 2022)
- "Malcolm has an absolutely first-rate understanding of public law. He also drafts pleadings really really well in a precise but persuasive style." (Legal 500 2022)
- "Responsive and able to crunch difficult points." "An extraordinarily brilliant young barrister." (Chambers & Partners 2021)
- "He makes really strong, well thought-out points." "He's very knowledgeable, very easy to work with and sensitive to client needs." (Chambers & Partners 2021)
- "He is fantastic. He is lightning quick and understands the Admin Court like the back of his hand." (Legal 500 2021)

- "He really knows his stuff; he's a fighter and he's incredibly bright." "His preparation was beyond the beyond: he was all over the case." "He's very responsive and very clear, and his analysis and his drafting were good under significant time pressures. He's very knowledgeable about the court and its processes." (Chambers & Partners 2020)
- "Malcolm Birdling is a pleasure to work with and staggeringly competent." "Everyone thinks he's marvellous. He's a really clever lawyer." (Chambers & Partners 2020)
- "His strongest feature is his ability to track down relevant case law that is less well known." (Legal 500 2020)
- "A very practical, sensible advocate." "Very, very intelligent," he is "approachable and user-friendly." (Chambers & Partners 2019)
- "His academic background shows through in the innovative nature of his thinking in public law." "His written work is clear and engaging." (Chambers & Partners 2019)
- "He provides advice with a confidence and clarity that belies his year of call." (Legal 500 2018-19)
- "He is clever, a good advocate, charming and brilliant." "He is very sharp and personable. He is my go-to person for complex public law questions." (Chambers & Partners 2018)
- "Malcolm Birdling is very clever, very nice and someone who cuts to the chase." (Chambers & Partners 2018)
- "A highly skilled, highly experienced, tenacious advocate." (Legal 500 2017)
- "He can hit the ground running and really get his head around a case at top speed." (Chambers & Partners 2017)
- "He's always a pleasure to deal with and judges are highly receptive to his advocacy style." (Chambers & Partners 2017)
- "Has a very good legal mind and is extremely easy to get along with. He is also particularly well informed. He is always easy to reach and prompt with his responses." (Chambers & Partners 2017)
- "An exceptional talent." (Legal 500 2016)
- "His availability, knowledge and experience are invaluable and, on a personal level, his demeanour and approachability ensure excellent teamwork." (Chambers & Partners 2016)
- "Offers extensive advocacy experience and is particularly adept at handling complex human rights and administrative and public law cases." (Chambers & Partners 2016)
- "An exceptional talent." (Legal 500 2016)
- "On top of both the factual evidence and the law." (Legal 500 2015)