



## Practice

Adrian's work spans a range of inter-related social welfare and human rights based areas of public law. He practises mainly in the Administrative Court in Judicial Review matters although he also appears in the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, the First-tier Tribunal (Asylum Support), the Upper Tribunal (Social Security, Child Support and Administrative Appeals), County Courts, the Special Immigration Appeals Commission (SIAC), the First-tier Tribunal (Immigration Services), the Solicitors Disciplinary Tribunal (SDT), and before education appeals panels. On appeal he has acted in cases before the Court of Appeal, the House of Lords and the European Court of Justice.

Current Ranking(s) in Chambers UK 2011: (Band 3: Immigration) - described as 'an "EU whiz-kid" who manages to "unscramble the EU and social security minefield with ease"' and as having 'an extensive British nationality law practice'.

### British Nationality

Adrian has an extensive practice in British nationality law, both in relation to historic Commonwealth based claims and contemporary issues concerning automatic acquisition of citizenship, naturalisation and registration, as well as loss of nationality. He has contributed to all parts of *Fransman's British Nationality Law* (3rd edition 2011), contributed the nationality law chapters to the *JCWI Handbook 2006*, contributed to *Jackson and Warr's Immigration Law and Practice* (2008) on the Right of Abode, contributed the nationality law chapters to the *Blackstone's Guide to the Borders, Citizenship and Immigration Act 2009* (OUP 2010), advised JCWI on government nationality proposals, contributed to responses to government consultation papers and advised peers in the House of Lords for ILPA. In addition, he has provided advice in *Chagos Islanders v UK* (ECtHR) on the position of the Chagos Islanders in British nationality law. He provides training on British nationality law and has taught nationality law as part of international public law to LLM students. He was a member of the group of nationality law experts reviewing the draft Protocol to the African Charter on Human and Peoples' Rights on the right to Nationality and the Prevention and Prohibition of Statelessness in Africa. He is also a member of the Expert Consultative Panel on 'Mapping Statelessness in the UK' for UNHCR and Asylum Aid. He was a member of the Home Office Earned Citizenship Strategic Advisory Group.

### Homelessness and Allocations, Migrant Welfare, Asylum Support and Community Care

Adrian regularly acts and advises in all areas of homelessness and allocations law concerning matters that are amenable to judicial review and in statutory homelessness appeals in the county court. In particular, he specialises in eligibility issues for migrants, appearing in numerous, reported cases (see below). He has also provided HLPAs with training on eligibility issues.

Adrian's expertise in Social Housing is in securing accommodation and housing for migrants. He provides a distinct service to solicitors with migrant clients based on being a one-stop shop on account of his fluency in housing, immigration and social security law. Where possible he solves problems in one of these areas by finding solutions in another.

In 2010 he was counsel in the first housing case (one of two linked cases) to

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1998

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### Education

M.A. (1994), M. Litt. (1996)

### Practice Areas:

Adrian Berry is a member of the following Practice Areas:

- Community Care
- Employment, Discrimination and Professional Regulation
- Housing
- Immigration - Asylum and Human Rights
- Immigration - Business and Private
- International Advice and Litigation
- Public & Administrative Law
- Welfare Benefits

### Garden Court Chambers

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reach the European Court of Justice from a British court, see **Teixeira (European citizenship) [2010] EUECJ C-480/08 Teixeira v London Borough of Lambeth and another**. In addition he has a string of reported cases demonstrating his expertise in helping migrants secure: homelessness assistance, asylum support accommodation, accommodation for children leaving care, and housing benefit. He is responsible for most of the homelessness 'eligibility' cases decided in the Court of Appeal in the last couple of years. He has appeared in cases in the High Court (Administrative Court), Court of Appeal, House of Lords and the European Court of Justice,

Adrian has developed a deep interest in migrant welfare, housing and support matters under different statutory regimes. His clients often have issues that touch on the Housing Act 1996, Community Care provisions under the National Assistance Act 1948 and other Acts, the Children Act 1989 and asylum support matters under the Immigration and Asylum Act 1999. He has particular expertise in asylum support.

He is also widely published on Social Housing for migrants having contributed to the chapter in *Macdonald's Immigration Law and Practice* (8th Edition, 2010, 7th Edition 2008) on 'Asylum Support, Housing and Community Care'; contributed the chapter in *Asylum Law and Practice* (Bloomsbury Professional, 2010), on the accommodation, housing and support of migrants 'Treatment of Asylum Seekers'; and contributed the chapter in the *Housing Law Handbook* (Law Society, 2009), on 'Housing outside the Parts 6 and 7 of the Housing Act 1996'. He also wrote the chapter in *Support for Asylum Seekers and other Migrants* (Legal Action Group, 2009) on benefits, including housing benefit.

He has a particular specialism in EU law as it applies to EU citizens and Third Country nationals in social housing, welfare and immigration cases, appearing in numerous reported cases. He is the author of '*Social Rights under Directive 2004/38/EC*' *Journal of Immigration Asylum and Nationality Law* Volume 21 Number 3 2007 pp. 233-244

## EU Law

Adrian has a particular interest in EU law as it applies to EU citizens and Third Country nationals in immigration and social welfare cases, and has appeared in EU law cases, including numerous reported cases (see below) in county courts, the Upper Tribunal (both in social security and in immigration cases), the Administrative Court, the Court of Appeal and the European Court of Justice (where he acted in the first homelessness case [one of two linked cases], to reach that court from the UK). He has also advised in cases involving Customs and Excise regulations concerning importation of cigarettes and alcohol. He has written extensively about the welfare of EU migrants, see *Macdonald's Immigration Law and Practice* (8th Edition, 2010, 7th Edition 2008) on 'Asylum Support, Housing and Community Care'; *Housing Law Handbook* (Law Society 2009); *Support for Asylum Seekers and other Migrants* (Legal Action Group, 2009); and *Social Rights under Directive 2004/38/EC* *Journal of Immigration Asylum and Nationality Law* Volume 21 Number 3 2007 pp. 233-244.

## Immigration

Adrian acts in the full range of matters before the First-tier Tribunal and the Upper Tribunal. He regularly acts for clients seeking leave in order to work under the Points-based system (Tiers 1, 2 and 5) and for students in matters arising under Tier 4. In addition, he advises and acts for schools, colleges and employers in



relation to Sponsor Licences (issue, suspension and revocation matters) and for employers in appeals in the county courts against the imposition of civil penalties for unlawfully employing persons subject to immigration control. He has advised and represented OSIC advisors in disciplinary matters before the First-tier Tribunal (Immigration Services). In addition he acts for and advises clients in respect of family reunion, Article 8 ECHR, Article 3 ECHR, Humanitarian Protection, and the Refugee Convention. He has contributed to *Macdonald's Immigration Law and Practice (8th Edition, 2010, 7th Edition 2008)* and *Asylum Law and Practice* (Bloomsbury Professional, 2010).

### **Child Support Agency**

Adrian acts for individuals in statutory appeals, civil actions, claims for judicial review and enforcement proceedings against the Child Support Agency (CSA). He has been involved in numerous reported cases in this area, see below.

### **Social Security and Pensions**

Adrian acts in the First-tier and Upper Tribunal in social security and pensions cases, including but not limited to cases that touch on immigration issues, pensions and points of statutory construction. He has also acted in such cases, many reported, before the Administrative Court, the Court of Appeal and by way of reference before the European Court of Justice. He contributed the chapter on benefits to *Support for Asylum Seekers and other Migrants* (Legal Action Group, 2009).

### **Education**

In the field of education law, Adrian acts for clients in schools admissions and exclusions cases.

### **National Security**

He acts for individuals in immigration cases involving national security issues in the Special Immigration Appeals Commission (SIAC). In such cases, he has appeared before SIAC, the Court of Appeal and the House of Lords, see reported cases below.

### **Elections**

Adrian has acted in Election Petition proceedings challenging election results, see cases below.

### **Professional Disciplinary Hearings**

Adrian has acted for clients in hearings before the Solicitors' Disciplinary Tribunal and the First-tier Tribunal (Immigration Services).

### **Emergency Injunctions**

Adrian has extensive experience of obtaining emergency telephone injunctions out of hours in housing, community care, Children Act 1989 and immigration matters.

### **Training and Teaching**

Adrian provides training courses in public law, community care law, migrant welfare, housing law, EU law, Social Security law and immigration law. This



includes accredited training for Garden Court Chambers, ILPA, HLPAs, JCWI, Legal Action, law centres, local authorities and the IAS. Private training on tailored topics can be provided on request. He has taught International Migration Law to LLM students.

## Notable Cases

**PM (EEA - spouse -"residing with") Turkey [2011] UKUT 89 (IAC)(7 March 2011) Upper Tribunal** Regulation 15(1)(b) of the Immigration (European Economic Area) Regulations 2006 applies to those who entered a genuine marriage where both parties have resided in the United Kingdom for five years since the marriage; the EEA national's spouse has resided as the family member of a qualified person or otherwise in accordance with the Regulations and the marriage has not been dissolved. The "residing with" requirement relates to presence in the UK; it does not require living in a common family home.

**R(on the application of Birara) v Hounslow Borough Council [2010] EWHC 2113 (Admin)(16 July 2010) Administrative Court** Accommodation for Children Leaving Care: Whether a local authority's decision to cease to provide a young person previously under its care with support and accommodation once she turned 21 could not stand where, in reaching that conclusion, it had failed to have regard to its own policy to continue to fund education past 21 in exceptional circumstances.

**Teixeira (European citizenship) [2010] EUECJ C-480/08 Teixeira v London Borough of Lambeth and another C-480/08 (23 February 2010) European Court of Justice** Whether an EEA national who is both a former worker and the primary carer of her children who are in education, is eligible for homelessness assistance by virtue of enjoying a right to reside pursuant to Article 12 of Regulation (EEC) 1612/68.

**R (on the application of Ghai v Newcastle City Council and Others & Secretary of State for Justice (Interested Party) & (1) Ramgharia Gurdwara, Hitchin (2) Alice Barker Welfare & Wildlife Trust (3) Equality & Human Rights Commission (4)Hindu Merchants Association (interveners) [2010] EWCA Civ 59 (2010) 3 All ER 380, (2010) 7 EG 101 (CS), Times, February 18, 2010 (10 February 2010) Court of Appeal** Whether the wishes of an orthodox Hindu that his remains be cremated on a traditional fire could be accommodated under the Cremation Act 1902 and the Cremation (England and Wales) Regulations 2008, whether the kind of structure that he found acceptable for his cremation was a "building" within s of the 1902 Act.

**Malekout v Secretary of State for Work & Pensions [2010] EWCA Civ 162 (02 February 2010) Court of Appeal** Whether for payments to be disregarded under the Income Support (General) Regulations 1987 Sch.9 para.15(5A)(e) for the purposes of assessing a claimant's entitlement to income support, the agreement giving rise to the payments, and not just the payments themselves, had to have been made in consequence of personal injury to the claimant.

**HS v Secretary of State (29 January 2010) SC/69/2008 Special Immigration Appeals Commission** Whether the exclusion a foreign national resident in the UK was in the interests of national security and compatible with Article 8 ECHR.

**Low & Ors, R (on the application of) v Secretary of State for the Home Department[2010] EWCA Civ 4 (14 January 2010) Court of Appeal**Whether the



decision of the Secretary of State to refuse residence documents to third country nationals otherwise unlawfully present in the UK was contrary to the freedom to provide services under Article 49 of the EC Treaty when such nationals were temporarily employed by an Irish company with a contract to provide services in the UK.

**Novitskaya v London Borough of Brent & Anor [2009] EWCA Civ 1260 (01 December 2009) Court of Appeal** Whether a claim for housing benefit can be made without using explicit words to indicate that a claim for housing benefit is being made. The judgment benefits vulnerable persons who make defective claims for housing benefit.

**Turner & Ors, R (on the application of) v Southampton City Council [2009] EWCA Civ 1290 (27 November 2009) Court of Appeal** Whether or not a local authority had erred in its decision to close a care home.

**Secretary of State for Work and Pensions v Dias [2009] EWCA Civ 807 (31 July 2009) Court of Appeal** Whether a EU Residence Permit confers eligibility for income support on a single female head of household who left work to care for her child by virtue of Article 16 of Directive 2004/38/EC or Article 18 of the EC Treaty; referred to the European Court of Justice.

**Yesiloz v London Borough of Camden & Anor [2009] EWCA Civ 415 (20 May 2009) Court of Appeal** Whether a Turkish asylum seeker on temporary admission and subject to immigration control, as a citizen of a state that had ratified ECSMA, and in respect of whom some provision had been made in social security legislation, ought to be considered as having a right to reside for housing benefit purposes.

**Barry v London Borough of Southwark [2008] EWCA Civ 1440 (19 December 2008) Court of Appeal:** Whether an EEA national was eligible for homelessness assistance as a worker where he had worked for two weeks at a tennis championship and sought to retain worker status.

**BY v Secretary of State for the Home Department [2008] UKSIAC 65/07 (07 November 2008) Special Immigration Appeal Commission** The application of EU law to an entry clearance application where national security forms the ground for exclusion.

**Baiai & Ors, R (On The Application of) v Secretary of State For The Home Department [2008] UKHL 53 (30 July 2008) House of Lords** Whether the scheme introduced by the Secretary of State that limited the rights of those subject to immigration control to enter into a civil marriage infringed the European Convention on Human Rights 1950 Art.12 and was therefore unlawful. The objection inherent in the scheme applied just as much in the case of an illegal entrant as in the case of persons with very limited permission to remain.

**Humphries & Ors v Secretary of State for Work and Pensions [2008] EWHC 1585 (Admin) (09 July 2008) Administrative Court** Child Support Agency (CSA) The application of the ex gratia compensation scheme and the use of administrative complaints procedures.

**GC (China) v Secretary of State for the Home Department [2008] EWCA Civ 623 (14 May 2008) Court of Appeal** Whether the Citizens Directive, 2004/38/EC, gave a right of residence to a person not himself a national of a Member State who is married to a UK national.



**Ehiabor v Royal Borough of Kensington & Chelsea [2008] EWCA Civ 1074 (08 May 2008) Court of Appeal** Homelessness: whether a child born in the UK to a person subject to immigration control, who had never left the country, could be a 'person from abroad' for the purposes of homelessness legislation.

**Secretary of State for Work and Pensions & Anor v Boyle & Anor [2008] EWCA Civ 210 (31 January 2008) Court of Appeal** Child Support Agency: The correct construction of secondary legislation where there is an interim maintenance assessment and information is provided to enable a full maintenance assessment to be made.

**Christie v Department for Constitutional Affairs & Anor [2007] UKEAT 0140\_07\_2307 (23 July 2007) Employment Appeal Tribunal** Whether a part-time fee paid tribunal chairman was a 'worker' within the meaning of the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Part Time Workers Framework Directive (97/81/EC).

**FD (Algeria) v Secretary of State for the Home Department [2007] EWCA Civ 981 (25 September 2007) Court of Appeal** Whether the Secretary of State can rely on the unlawful presence of an unmarried partner of an EEA national to refuse a residence card, notwithstanding that they are in a durable relationship and whether the Secretary of State can apply the domestic immigration rules to the application (case settled).

**Rowley & Ors v Secretary of State for Department of Work and Pensions [2007] EWCA Civ 598 (19 June 2007) Court of Appeal** Whether the Secretary of State for Work and Pensions owed a common law duty of care in negligence to an applicant for child support under the Child Support Act 1991 as such a duty would be inconsistent with the statutory scheme.

**Baiai & Ors, R (on the application of) v Secretary of State for the Home Department & Anor [2006] EWHC 1035 (Admin) (10 May 2006) Administrative Court** Whether human rights damages are available and should be awarded to a person where there is a breach of Article 12 and Article 14 ECHR.

**Hussein & Ors v Khan & Ors [2006] EWHC 262 (QB) (23 February 2006) In the matter of the Representation of the People Act 1983 High Court.** Election Petition

**Paul-Coker, R (on the application of) v London Borough of Southwark [2006] EWHC 497 (Admin) (03 March 2006) [2006] HLR 32 Administrative Court** Homelessness, interim accommodation pending Review, there was an unreasonable refusal letter failing to adequately apply the ex parte Mohammed test in context of an arguable habitual residence of Claimant.

**YD (Turkey) v Secretary of State for Home Department [2006] EWCA Civ 52 (08 February 2006) Court of Appeal:** Inherent power of Court of Appeal to order stay on removal where an appeal from AIT lodged out of time.

**Mohamed, R (on the application of) v London Borough of Harrow [2005] EWHC 3194 (Admin) (13 December 2005) [2006] HLR 18 Administrative Court** Homelessness, Interim accommodation pending Review, whether EC workers and EU citizens excluded from consideration.

**Afzal, R (on the application of) v Election Court & Ors [2005] EWCA Civ 647 (26 May 2005) Court of Appeal:** Election process, Local Government, Electoral corruption.



**R (Conde) v Secretary of State [2005] EWHC 62 (Admin) [2005] HLR 452**  
**Administrative Court:** Availability of Children Act services to work seekers from EU Member States.

**Burns, R (on the application of) v London Borough of Southwark [2004] EWHC 1901 (Admin) (19 July 2004)****Administrative Court:** Whether local authority entitled to rely on Home Office view of immigration status or whether it is required to make its own enquiries.

**Chen and Others (Free movement of persons) [2004] EUECJ C-200/02 (19 October 2004) [2005] QB 325, [2005] All ER (EC) 129 [2004] 3 CMLR 1060**  
**European Court of Justice:** Right to reside in UK of primary carer of an EU/Irish citizen in context of right to reside under Article 18 of the EC Treaty.

**R (D) and R (H) v Secretary of State CO/2106/2004 Administrative Court**  
Welfare benefits for EC Accession State nationals.

**Zardasht, R (on the application of) v Secretary of State for Home Department [2004] EWHC 91 (Admin) (23 January 2004) [2004] All ER (D) 196 (Jan)**  
**Administrative Court:** Destitution of asylum seekers, ambit of Article 3 ECHR

**[2003] UKSSCSC CH\_474\_2002 (18 August 2003)****Social Security Commissioners** Where a claimant has a mental health problem which makes him or her act unreasonably, for example, compulsive behaviour disorder, must the terms of the legal test must be adjusted to take that unreasonableness into account.

**A, X and Y, & Ors v Secretary of State for the Home Department [2002] EWCA Civ 1502 (25 October 2002) Court of Appeal:**Article 15 ECHR, Derogation, Detention, Discrimination, Article 14 ECHR, Terrorism, National Security.

**Secretary of State For The Home Department v. Rehman [2001] UKHL 47 (11th October, 2001) [2003] 1 AC 153, [2002]1 All ER 122 House of Lords:** Deportation and National Security.

**Roker International Properties inc & Anor v (1) Couvaras (2) Wolf (2000) 2 FLR 976 High Court**  
Foreign divorce settlements

## Publications

### Books

**Fransman's British Nationality Law** (3rd edition, 2011) contributor to all chapters.

**Macdonald's Immigration Law and Practice** (8th Edition, 2010, 7th Edition, 2008)contributor, 'Welfare Benefits, Asylum Support and Community Care'

**Asylum Law and Practice** (Bloomsbury Professional, 2010), contributed the chapter on 'Treatment of Asylum Seekers'

**Blackstone's Guide to the Borders, Citizenship and Immigration Act 2009** (OUP, 2010) co-author (wrote the chapters on British nationality)

**Housing Law Handbook** (Law Society, 2009), co-author, contributed the chapter



on 'Housing outside the Parts 6 and 7 of the Housing Act 1996'

**Support for Asylum Seekers and other Migrants**(Legal Action Group, 2009), contributed the chapter on benefits.

**Blackstone's Guide to the Criminal Justice and Immigration Act 2008** (2009) (contributed the chapter on 'Foreign Criminals'/Special Immigration Status)

**Jackson and Warr's Immigration Law and Practice**(4th Edition, 2008) (contributor, 'The right of abode'/British nationality)

**JCWI Immigration, Nationality and Refugee Law Handbook 2006** (contributor, British nationality chapters)

**Dealing with your Dismissal** (Hodder Headline 2000), author (concerning dismissal and redundancy law)

## Articles

**The Right to Marry and Immigration Control: The Compatibility of Home Office policy with Article 12 and Article 14 ECHR in *Baiai*** Journal of Immigration Asylum and Nationality Law Volume 23 Number 1 2009 pp. 41-50

**Border Trouble: The UK Borders Act 2007** New Law Journal 158 NLJ 201 8 February 2008

**Social Rights under Directive 2004/38/EC** Journal of Immigration Asylum and Nationality Law Volume 21 Number 3 2007 pp. 233-244

## Professional Memberships

- Administrative Law Bar Association (ALBA)
- Housing Law Practitioners' Association (HLPAs)
- Immigration Law Practitioners' Association (ILPA)
- Social Security Law Practitioners' Association (SSLPA)
- Haldane Society

## Pro Bono and Community Work

- European Human Rights Advocacy Centre (EHAC)
- Asylum Support Appeals Project (ASAP)

Profile updated July 2011