



GARDEN COURT CHAMBERS

# Marc Willers QC

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



Legal 500 2022, Leading Silk

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

He is recommended in the Chambers UK Bar Guide 2021 in planning law and environmental law and is recommended in the Legal 500 in planning law and environmental law and civil liberties. He is also the co-editor of *Gypsy and Traveller Law* (3rd edition, 2020 LAG).

Marc won the Legal Aid Lawyer of the Year Award in 2011 and he was Joint Head of Garden Court Chambers between 2016 - 2020. Marc is a member of the Irish Bar, and he is also registered with the Bar Council for public access work and assists private clients in all the areas of his expertise.

On 30 May 2019, Marc was named [Times Lawyer of the Week](#) after an application by Bromley Council for an injunction prohibiting camping on 171 open spaces and car parks

in the borough was refused by the High Court following a legal challenge by London Gypsies & Travellers (intervening) represented pro bono by Marc Willers QC and Tessa Buchanan. Bromley appealed the decision and Marc and Tessa continued to act for London Gypsy Travellers. On 21 January 2020 the Court of Appeal dismissed the appeal and set out its reasoning in a [landmark judgment](#).

"He is really clear and has a great way of reading the judge."

CHAMBERS UK, 2022 (ENVIRONMENT)

"Marc is an excellent counsel. He is detail-oriented and very good under pressure."

CHAMBERS UK, 2022 (PLANNING)

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

CHAMBERS UK, 2022 (CIVIL LIBERTIES & HUMAN RIGHTS)

'Approachable but very tenacious, he excels at dealing with a diverse range of clients.'

LEGAL 500, 2021 (ENVIRONMENT)

"Marc is an astute planning and public law barrister with great all-around knowledge. He is very good in writing and on his feet. His knowledge and calm demeanour put clients and judges at ease, and he is sought after, in particular in relation to claims challenging fracking, which are a particular specialty of his."

LEGAL 500, 2021 (PLANNING)

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

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You can also contact Marc directly:  
[marcw@gclaw.co.uk](mailto:marcw@gclaw.co.uk) | +44 (0)20 7993 7893

## ADMINISTRATIVE AND PUBLIC LAW

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Marc has extensive experience and expertise in public and administrative law.

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; 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; and the Irish Traveller residents of Dale Farm in their widely publicised judicial review of Basildon Council's decision to evict them from their site.

Marc also undertakes work concerning planning and environmental law, human rights and discrimination and the rights of Gypsies, Roma and Travellers.

### NOTABLE CASES

#### ***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](#).

#### ***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 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.

***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.

## ENVIRONMENTAL LAW

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

In the international arena, Marc was instructed, with four other members of Chambers, to represent 6 Portuguese youth applicants who filed a [multi-state climate change complaint with the European Court of Human Rights](#), ***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. This 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.

In addition, Marc has assisted Leslie Thomas QC 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 challenge to the Antiguan

government's decision to grant planning permission for a new airport on the island on Barbuda brought on environmental grounds.

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.

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.

## **NOTABLE CASES**

Notable recent domestic cases include:

### ***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.

### ***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

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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 judicially 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.



## PLANNING LAW

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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

#### ***Lisa Smith v SSHCLG (with the EHRC, LGT, FFT, NFGLG and STAG intervening)***(ongoing)

This is a planning challenge under section 288 TCPA 1990 against 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 travellers (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. Judgment is reserved. 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.

#### ***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 a 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.

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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**

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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, with four other members of Chambers, to represent 6 Portuguese youth applicants who filed a [multi-state climate change complaint with the European Court of Human Rights](#), ***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. This 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.

## **NOTABLE CASES**

### ***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)* (ongoing)**

This is a planning challenge under section 288 TCPA 1990 against 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 travellers (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. Judgment is reserved. Marc represented the claimant and led Tessa Buchanan.

### ***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 1850

These two judicial review claims followed [\*Moore and Coates v SSCLG and EHRC\*](#) [2015] EWHC 44 (Admin) in which Gilbert 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

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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.

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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*'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 Gilbert 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.

***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.

***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

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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 represent 6 Portuguese youth applicants who have filed a [multi-state climate change complaint with the European Court of Human Rights](#), ***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. This case has been [widely reported](#).

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.

## NOTABLE CASES

***Lisa Smith v SSHCLG (with the EHRC, LGT, FFT, NFGLG and STAG intervening)* (ongoing)**

This is a planning challenge under section 288 TCPA 1990 against 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 travellers (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. Judgment is reserved. 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.'*

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## INTERNATIONAL

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Marc was instructed, with four other members of Chambers, to represent 6 Portuguese youth applicants who filed a [multi-state climate change complaint with the European Court of Human Rights](#), ***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. This 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.

In addition, Marc has assisted Leslie Thomas QC 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 challenge to the Antiguan government's decision to grant planning permission for a new airport on the island on Barbuda brought on environmental grounds.

## FURTHER NOTABLE CASES

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More of Marc's notable cases can be found [here](#).

## BACKGROUND

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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**

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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). Marc wrote 'Chapter 13 - Climate Change Litigation in European Regional Courts: Jumping Procedural Hurdles to Hold States to Account?'

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

## **TRAINING AND SEMINARS**

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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.**
- **Most recently, Marc gave evidence 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

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- LLB

## PROFESSIONAL MEMBERSHIP

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- Administrative Law Bar Association (ALBA)
- Planning and Environment Bar Association (PEBA)
- [Institute of Law and Ethics \(ILE\)](#)

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

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You can also contact Marc directly:

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