



# Mark Symes

YEAR OF CALL: 2004



Barrister Mark Symes provides advice and representation in all areas of immigration, asylum, and human rights law, including European Union free movement law. He has represented clients in every court from the Tribunal to the Supreme Court, and the European Court of Human Rights.

Mark deals with work ranging from business immigration and entry clearance representations and appeals, to refugee and criminal deportation cases. He is one of the elite top-ranked barristers for immigration in Chambers UK (Band 1) and the Legal 500.

Mark is appointed to the Equality and Human Rights Commission's preferred Panel of Counsel (Panel A).

Mark is registered with the Bar Council for public access work and regularly represents private clients of means in difficult immigration scenarios.

"Mark is one of the finest immigration barrister at the Bar. His written work is breathtakingly good. His knowledge of asylum and human rights law is fantastic."

LEGAL 500, 2024 (IMMIGRATION)

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"A giant of immigration law."

CHAMBERS UK, 2024 (IMMIGRATION)

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"He is very to the point in his advocacy. He is very articulate in his speech."

CHAMBERS UK, 2024 (IMMIGRATION)

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"He has very thorough knowledge of the appeals system."

CHAMBERS UK, 2024 (IMMIGRATION)

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"A don of the industry. His exceptional and detailed technical knowledge, many years' experience and his ability to translate that practically into pragmatic, commercial advice, are all much valued by clients."

CHAMBERS UK, 2023

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"A master of immigration law, he knows it all. He is super helpful and gives great advice."

CHAMBERS UK, 2022

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

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You can also contact Mark directly:

+44 (0)20 7993 7688

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**IMMIGRATION LAW**

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Mark takes a proactive and hands-on approach to working with solicitors, and is available to discuss instructions from the earliest stage. He will advise on the best evidence and tactics that can really give a client the best chance to win their case. He sits as a judge of the Upper Tribunal and First-tier Tribunal which gives him great insight into the way a case should be presented. He can make the most difficult factual and legal history easy for the Home Office or judges to understand.

He has appeared in many leading cases involving issues crossing over between international protection, human rights and European law issues. He is very well known to the senior judges in the Upper Tribunal having specialized in higher appeals for over 20 years. See the Foreword to his book with Peter Jorro *Immigration Appeals and Remedies Handbook* ("invaluable ... to the armoury of all ... a compulsory addition to the library of every immigration judge and practitioner": President of the Upper Tribunal Mr Justice McCloskey). He has been instructed as an expert witness in family and civil proceedings on various aspects of immigration, human rights and asylum law, including giving his opinion on issues involving children.

Mark is very active in public speaking and training (he is a Fellow of the Institute of Advanced Studies with "encyclopaedic... pre-eminent" knowledge according to one Supreme Court judge) and is a contributor to *Macdonald's Immigration Law and Practice*. Mark has long been one of the experts who specialist immigration lawyers go to in order to make sure that they are up to speed with the latest legal arguments and regularly speaks at practitioner conferences. He is recognised as the leading textbook writer on international protection law for his book *Asylum Law and Practice* (alongside his colleague Peter Jorro).

### **Mark's specialities include:**

**Effective advocacy in the Tribunals and higher courts**

**Writing persuasive representations and pre action letters that avoid the need for subsequent legal action**

**Coming on board at any stage to improve the prospects of all kinds of immigration case**

**Challenging all kinds of government decision via judicial review, using his exhaustive case law knowledge to draft persuasive arguments to get results**

**Advising on the best strategy for achieving the quickest route to getting the desired result, and on the merits of different options**

**Showing that administrative mishaps should not have disproportionate results**

**Proving that an interview was unfair**

**Demonstrating that new evidence or a change of circumstances creates a viable fresh asylum or human rights claim**

### **Private client immigration work**

Mark's experience from practising immigration law for 25 years and sitting as a judge adds exceptional value to his client's cases. He is able to deploy the encyclopaedic knowledge and practical insight gained from presenting thousands of cases and the legal research that comes from writing established leading textbooks.

Mark has recently helped his clients in:

**Giving practical advice on the merits of various options, anticipating the likely reaction of judges and government decision makers to every kind of case**

**Writing efficient and effective representations and advising on the very best forms of evidence needed to support a case**

**Getting cases reconsidered at the administrative review stage due to a failure to properly engage with the evidence originally provided**

**Preventing deportation by putting together a watertight case on family links in the UK, advising on the best possible evidence and liaising with independent social workers: Mark is one of the very few barristers to win a deportation case in the Court of Appeal**

**Fighting "general refusal" reason cases based on English language test fraud allegations and omissions in application forms**

**Contesting allegations regarding tax evasion and asserted discrepancies in earnings reported to HMRC and UKVI**

**Getting ILR for clients arguing they have established 10 years' lawful residence**

**Arguing that minor convictions should not prevent applications succeeding**

**Challenging refusals and revocations of nationality**

**All kinds of EU law and family migration cases (see further below)**

**Working alongside colleagues, helping detained clients obtain bail**

**Every kind of refugee claim: including achieving refugee status for bloggers and many others who have been politically active in the UK and abroad, winning asylum appeals for businesspeople and others facing prosecution on trumped up charges, and for LGBTI asylum seekers facing persecution because of their sexual identity**

## **Family migration**

Mark regularly represents individuals who face separation from loved ones. He regularly presents seminars to very experienced solicitors on the latest legal arguments that are available in these cases.

Mark's recent work includes:

**Identifying the best route for a spouse or partner to remain or come to the UK and getting the supporting evidence right**

**Successfully arguing that there are "insurmountable obstacles" to a couple going abroad or that it is unreasonable for a child to relocate**

**Demonstrating that a spouse seeking entry clearance to return to the UK via did not contrive to frustrate the purpose of the Immigration Rules**

**Arguing cases for adult dependents such as parents living in difficult conditions abroad and wanting to join their children in the UK**

**Explaining how the complex financial requirements for the Appendix FM route can be met**

**Resurrecting refused cases by advising on fruitful sources of fresh evidence**

## **Business and private immigration**

Mark's business acumen, developed whilst being a company director at HJT Training, makes him a good choice for commercial immigration advice. He has real expertise in every aspect of business immigration, from *Van Der Elst* visas for EU-established companies moving staff outside the Tier 2 route to investors, innovators, entrepreneurs and Tier 2 inter-company transfers. He has advised numerous wealthy individuals in complex cases. He has particular expertise with remedies in Points Based System cases including the withdrawal and suspension of sponsor licences, both of employers and educational establishments, an area on which he has written and spoken extensively. Mark has repeatedly been chosen as the Immigration Lawyers' Practitioners' Association speaker of choice at their annual conference for expert business immigration lawyers.

Mark's recent work includes:

**Writing representations seeking the exercise of discretion in all kinds of commercial immigration cases for sponsors and businesspeople**

**Advising on strategy and tactics in sponsor licence cases, including drafting representations against revocation and pre action letters**

**Obtaining reconsiderations and reopening the window for fresh evidence in administrative review applications**

**Advising investors on genuineness and bad character allegations and on technical aspects of their applications such as sources and control of funds, and on the fastest settlement route**

**Advising businesspeople still on the Entrepreneur route regarding job creation and genuineness allegations**

**Advising on how best to make use of the sole representative route**

**Demonstrating that a businessperson has established private life in the UK or that their property rights should be respected**

**Advising investors who have been refused settlement on the basis of suspicions as to whether their original investments were genuine because of the degree of control they held over their funds and the nature of their investments**

## **European Union free movement law**

Mark has particular expertise in all aspects of European Union free movement law from claims under the 2016 Regulations to free-standing applications relying directly on Treaty Rights. He regularly trains and speaks

publicly on matters involving European Economic Area (EEA) nationals. His successful judicial review case of *Heritage* (IJR) [2014] UKUT 441 on the relationship between EU residence rights and "precarious" immigration status is a rare reported decision showing that EU law residence can rights may be relevant to Human Rights arguments. Mark has already given numerous talks on the settled status scheme and the impact of Brexit on domestic law in the immigration context.

Mark's recent EU law work includes:

**Obtaining permanent residence and settled status for EEA nationals with challengingly complex histories of work, self-sufficiency and study**

**Advising on options in the run-up to Brexit for EU citizens and everyone else affected by Brexit, including dual nationals and family members**

**Advising the employers of EU workers on their future options**

**Comparing the criteria for, and pros and cons of, settled status, permanent residence under the EEA Regs 2016, and other possible status**

**Showing that adult dependants are extended family members who should receive residence cards due to close family ties**

**Demonstrating that British citizens have genuinely conducted effective work abroad so they should be allowed to sponsor their family members via EU rather than UK laws (i.e. in *Surinder Singh* cases)**

**Defending clients from allegations of having entered into sham marriages**

## **IMMIGRATION: ASYLUM AND HUMAN RIGHTS**

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Recognised by the legal directories as a "*real expert on asylum matters*", Mark is co-author (with Peter Jorro, also of Garden Court) of *Asylum Law and Practice* described as "*indispensable in advocacy work for refugees and human rights*", by Professor Guy Goodwin-Gill.

He is particularly interested in the European dimension of international protection, and arguments based on the Qualification, Procedures and Reception Directives, and the Charter of Fundamental Rights.

Mark's interests and experience extend to issues of exclusion from refugee status and subsidiary protection.

He is a member of UNHCR's pro bono panel of advocates and is a convenor for the International Association of Refugee Law Judges. He is also a Visiting Fellow at the Refugee Law Initiative, School of Advanced Study, at the University of London.

Mark has long been at the forefront of cutting-edge asylum and human rights work.

Mark has recently been involved in cases:

**Arguing about the meaning of persecution and the parameters of various Convention reasons**

**Addressing when internal relocation becomes unreasonable and when protection can be expected from non-state actors**

**Demonstrating the proper approach to asylum claims where the claimant is facing return to a destination to other than their country of origin (a recent case of Mark's finds the UT President accepting that there is a special test to measure the lawfulness of returning asylum seekers to countries of habitual residence)**

**Running asylum claims arising from military service, including draft evasion by conscientious objectors, and those wishing to avoid committing internationally condemned activities or receiving disproportionate punishments**

**Fighting exclusion clause decisions on grounds of international or other serious criminality**

**Showing that Iraqi, Somali and Afghan asylum seekers have viable fresh claims**

**Addressing Article 1D Exclusion issues for Palestinians**

**Determining the relationship between statelessness and refugee status**

**Challenging all kinds of asylum decisions not carrying the in-country right of appeal by way of judicial review**

## **NOTABLE CASES**

Past notable cases can be viewed below. [Click here to see a list of recent notable cases.](#)

### **Asylum cases:**

#### ***EM (Eritrea) R (on the Application of) v Secretary of State for the Home Department UKSC 12***

Supreme Court case in which the litigation challenged the compatibility of returning asylum seekers to Italy (where they face destitution) with their right to be free from inhuman and degrading treatment.

#### ***Tarakhel v Switzerland***

Mark is instructed in this case on the same issue as above in the Grand Chamber of the European Court of Human Rights.

#### ***EW Italy***

Mark appeared for the claimants in the earlier test case on the safety of Italy for "third country" returnees.

Mark has been extensively involved in a number of challenges to returns to Greece, in which context he has repeatedly addressed conferences of Europe's leading asylum lawyers. His work was critical in developing the arguments which led to the referral of the Greek third country cases to the Court of Justice for the European Union in *NS (R on the application of) v Secretary of State for the Home Department & Ors* [2010] EWCA Civ 990.

#### ***SQ (Pakistan) & Anor* [2013] EWCA Civ 1251**

Mark acted for the successful claimants in this landmark case where the Court of Appeal recognised that a different test applies where children, as opposed to adults, challenge their removal abroad because of the lack

of health treatment there.

### ***KU Pakistan [2012] EWCA Civ 107***

The Court of Appeal allowed an appeal, so reversing the Tribunal decision below, in which the Upper Tribunal had been too quick to deprive an asylum seeker of positive credibility findings in the Harmondsworth fast track.

### ***FM Afghanistan***

The Upper Tribunal issued a much-cited landmark decision disapproving the approach taken by their predecessors in the claims of children fearing armed conflict, and to tracing relatives of unaccompanied minors.

### ***MK (Iran) [2010] EWCA Civ 115 (25 February 2010)***

Mark produced advices on the scope of the Charter of Fundamental Rights and the right to refugee status in international and European law for Sultan Lloyd Solicitors.

### ***Sangatte Legitimate Expectation Cases***

Working with Hammersmith Law Centre, Mark represented the successful Iraqi claimants in the litigation that challenged the refusal of settlement to Sangatte arrivals.

### ***Important cases on state protection, internal relocation, state recognition, and past persecution***

In his Refugee Legal Centre days, Mark led the organisation's intervention in the House of Lords in Horvath (summer 2000). In the Immigration Appeal Tribunal, he represented the appellant in the reported case of *Acero Garces*, and in other important cases: *Allie* (on past persecution), *Foum* (on internal relocation: subsequently relied on by the Strasbourg Court in *Hilal v UK*), and *Ertan* (on the recognition of states).

### ***LA (para 289A: causes of breakdown) Pakistan [2009] UKAIT 00019***

A positive decision on causation and domestic violence.

Criminal Deportation Cases:

### ***DB (Jamaica) [2017] EWCA Civ 440***

Mark represented the successful criminal deportation in the Court of Appeal against Robin Tam QC for the Secretary of State, in which Davis LJ expressly commended the care and clarity of Mark's approach. The court accepted that the First-tier Tribunal had been right to allow the client's appeal, having referred to



"exceptional" circumstances in the appropriate context albeit not expressly asking whether the case was a "compelling" one. Mark was instructed by Mark Lilley-Tams of Paragon Law.

### **Detention Cases:**

#### ***Saleh (Sudan)* [2013] EWCA Civ 1378**

Mark succeeded in securing a major victory in the Court of Appeal, including a damages claim, for a client whose asylum claim had not been processed with appropriate speed by the Home Office.

#### ***Ibrahim & Anor* [2010] EWHC 764 (Admin)**

Mark appeared for the claimant (instructed by Sue Willman of Pierce Glynn Solicitors) in achieving damages for unlawful detention for the claimant in this important test case about the treatment of Iraqi nationals.

## **ADMINISTRATIVE AND PUBLIC LAW**

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Mark is a very experienced judicial review practitioner who has acted in hundreds of successful claims. He specialises in human rights, refugee, and subsidiary protection issues, though frequently extending to other areas. Mark has long specialised in running inventive arguments that achieve effective results in all kinds of judicial review applications. He had written and contributed to several leading textbooks, including the judicial review chapter of the *Immigration Appeals and Remedies Handbook*. He brings a unique combination of practical experience combined with familiarity with the very latest thinking, derived from his academic and judicial work.

Mark's legally aided public law experience includes:

**Fighting third country Dublin 3 removals to all EU Member States, including arguments on country conditions, UK links, lapsed time limits and departure from the EU for more than 3 months**

**Achieving release from detention and favourable damages settlements in many scenarios: a pregnant woman wrongly detained, trafficking victims, EEA nationals with non-suspensive appeals following Regulation 33 certificates, non-removable individuals with *Hardial Singh* claims, asylum seekers with complex pending appeals**

**Exploring procedural investigative duties for vulnerable adults at risk in detention**

**Determining the proper approach to medical opinion evidence**

**Challenging negative decisions on trafficking**

**Fitness to fly challenges**

**Arguing that a person's lack of removability and limbo status calls for the grant of leave to remain**

**Arguing that serious health conditions reach the relevant threshold in EHCR or EU law, and that EU law already enforces the *Paposhvili* threshold**

**Running cutting edge legal arguments of all kinds: for former child soldiers, civilians and others caught up in armed conflict**

**Formulating creative arguments re the ambit of Article 8 ECHR: including the proper threshold for measuring “insurmountable obstacles” and “exceptional circumstances”, the relationship between the GEN exceptions and proportionality, private life and social exclusion**

**Running various EU law claims, addressing issues such as the admissibility of post decision evidence, damages and the requirement for an effective remedy, the need for decisions to take account of EU law proportionality principles and the lawfulness of unduly onerous administrative provisions**

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## **PROFESSIONAL REGULATION**

Mark conducts compliance and regulatory work, and has worked for the Law Society, Office for the Immigration Services Commissioner, and with individual law firms in contractual disputes with the Legal Services Commission (LSC, now the LAA).

His previous experience as a solicitor working under public funding is especially useful in this regard.

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## **BACKGROUND**

Mark joined Garden Court Chambers in 2004, having formerly worked at the Refugee Legal Centre where he held numerous posts including Head of Tribunal Team in which he had responsibility at national level for legal strategy. Formerly a solicitor, he was Head of Advocacy at one of the country's leading legal aid firms in the early 2000s.

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## **PUBLICATIONS**

Co-author (with Peter Jorro, also of Garden Court) of *Asylum Law and Practice* (Bloomsbury, 2nd edition June 2010). Described as "encyclopaedic in its coverage ... pre-eminent" in the field by Lord Brown and as "indispensable in advocacy work for refugees and human rights", by Professor Guy Goodwin-Gill

Principal legal consultant to the Electronic Immigration Network

Consultant Editor of the *Immigration and Nationality Law Reports*

Editor of *Atkins Court Forms* and *Encyclopedia of Forms and Precedents* (Butterworths, 2006)

Sole editor of *Statements of Principle of the Immigration Appeal Tribunal*, a 2,500-page guide to the jurisprudence of that tribunal published in September 1999 by the Refugee Legal Centre, with a foreword by former President of the Tribunal, His Honour Judge Pearl

Author of *Case Law on the Refugee Convention*, a guide to the international judicial approach to the 1951 Convention, with a foreword by Professor Goodwin-Gill, published in April 2001 by the Refugee Legal Centre, and recommended by the United Nations High Commissioner for Refugees (UNHCR) and the Immigration Lawyers Practitioners' Association (ILPA)

Author of *The Law Relating To Without Foundation Asylum Appeals*, (published by the Refugee Legal Centre, May 1996)

## **TRAINING AND SEMINARS**

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Mark is well known for training and public speaking in the field of immigration and asylum law. He was appointed to write the new academic standards for the Law Society's Immigration Accreditation Exams. He is a co-founder of HJT Training (with David Jones, also of Garden Court), the leading private company specialising in training in immigration law. HJT has provided training to UNHCR, Liberty, the Legal Services Commission, Office for the Immigration Services Commissioner, the legal staff of the Immigration Tribunals and Royal Courts of Justice in the UK and judges of the Refugee Appeals Tribunal of Ireland, as well as most of the UK's leading immigration solicitors' firms.

Mark ran the immigration and asylum course at the Inns of Court School of Law. He was a lead trainer for the College of Law in their winter 2002 project for the Legal Services Commission to provide training on immigration appeals to new barrister practitioners in the field. He delivers professional training for the Joint Council for Welfare of Immigrants (JCWI), and occasionally runs advanced courses in refugee, human rights and appeals law for the ILPA.

He is regularly invited to speak domestically and abroad on refugee and human rights law issues.

Mark has, in the past, been part of the Consultation Group responsible for briefing the Lord Chancellor's Department on the content of the Immigration and Asylum Appeals (Procedure) Rules. He was, at one time, co-convenor of ILPA's Refugee Sub Committee and has assisted the organisation with numerous projects and publications over the years. With the Refugee Legal Centre, he advised the Opposition in Standing Committee on their legal stance during the passage of immigration legislation during the 1990s.

## EDUCATION

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**BA (Hons) (Oxon)**

**LPC**

Formerly Solicitor of the Supreme Court

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