

# Lord Garnier KC

Call 1976 Silk 1995



Edward Garnier KC is a highly experienced silk in England & Wales and Northern Ireland.

His practice includes corporate advisory and financial services work, corporate crime and international human rights as well as defamation, privacy, confidence, malicious falsehood, contempt and related media law cases. His extensive experience in practice is underpinned by a parallel career in politics and as one of the Government's two Law Officers: he served as an MP from 1992 until 2017 and was HM Solicitor General from 2010 to 2012. He is now in the House of Lords.

Edward advises and acts for companies and individuals whose rights have been adversely affected by foreign governments and agencies, including, for example, by asset seizures, imprisonment, extradition applications and Interpol Red Notices, as well as for overseas governments and agencies who are seeking to comply with international standards and the rule of law. He is regularly consulted by NGOs and charitable organisations.

When in Government as Solicitor General, he developed and introduced into this jurisdiction from the United States the Deferred Prosecution Agreement, a means of dealing with companies who admit their offending to supplement prosecutions against individuals suspected of economic crime. He appeared for the Serious Fraud Office in two of the DPAs so far approved by the Court, the first one, Standard Bank, in 2014, and the then-largest, Rolls-Royce, in 2017. In 2020-21 he led the legal team acting for two respondent companies in the 11<sup>th</sup> and 12<sup>th</sup> DPAs to be approved by the Court.

In the media law sphere, Edward acts for individual and corporate claimants, both within England & Wales and Northern Ireland and abroad, and for individual defendants and corporate defendants from the publishing, internet and broadcasting world.

Edward's principal areas of practice are:

- Defamation & Media Law
- Financial Crime: Corporates
- International & Human Rights Law
- Public Law and Judicial Review

## Defamation & Media Law

Acting for both claimants and defendants, Edward has appeared in a number of high profile defamation cases over the last 45 years, including for the Daily Mail in the famous “Moonies” trial, a 6 month jury trial concerned with allegations of brainwashing and the breakup of families; the case brought by Lord Aldington against Nicholas Tolstoy involving allegations of war crimes against Cossacks and other Russians who fought for the Germans in the Second World War; the Garfoot case in which he recovered £400,000 from a jury in Newcastle for a man falsely accused of rape by a work colleague; and, on his return to private practice from Government, acting for the former Conservative Party Treasurer, Lord McAlpine, in the several successful cases he brought in respect of allegations of child sex crime including that against the Speaker’s wife, Sally Bercow, one of the first libel actions involving Twitter. He has advised newspapers, broadcasters and other publishers in contempt and reporting restriction cases as well as, both in private practice and when Solicitor General, prosecuting in contempt cases.

### Featured Defamation & Media Law cases

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Edward acted for Irina Bokova, the Director General of UNESCO 2009-17, in her defamation claim against the publishers of the Daily Mail in respect of two articles, one in the hard copy issue and the other in the on-line edition. The articles were published in April 2016, at a time when she was campaigning to succeed Ban Ki-Moon as UN Secretary General. This extremely high-profile case concerned issues on meaning, truth, the conduct rule, the repetition rule and damages/mitigation (2017-18).

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Edward advised two data analysis companies, one American and one British, accused in a series of articles in the Observer of improper conduct in relation to the UK EU referendum and the US Presidential election. The case was factually complex and involved both US and English defamation and data protection/ information law (2016-18).

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Edward is advising a high net worth American in relation to allegations of illegal data harvesting in support of the Brexit campaign during the EU referendum broadcast in January 2019 in the C4 film, “Brexit: the Uncivil War” starring Benedict Cumberbatch.

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Emergency contact on a Saturday to consider an interlocutory injunction application to restrain publication in the Financial Times of allegations against a Danish bank of money laundering through its Lithuanian branch. Advised on merits and likelihood of success over the weekend and then, in the following week, on action in respect of the published articles (2018).

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Urgently advising a Russian businessman resident in the USA and his group of companies over a Friday and weekend in December 2018 in relation to an intended broadcast by BBC Radio 4 of allegations of involvement in Russian espionage in America.

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Acting for the Belfast News Letter, Northern Ireland’s oldest continuously published newspaper, in a libel action brought by a former head of the Northern Ireland Civil Service in respect of extracts from a Northern Ireland National Audit Office report on the conduct of government support for industry in Northern Ireland. The Northern Ireland Court of Appeal (2014) underlined the need for close examination of allegations of express malice as well as commenting on statutory qualified privilege for fair and accurate reports of publications authorized by government or a legislature.

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Lord McAlpine v Sally Bercow (2013): One of first libel actions involving Twitter in which the court found the defendant had alleged the claimant was a suspected paedophile. Very substantial damages were recovered. Lord McAlpine also pursued many other bloggers and social media publishers of the same or similar allegations securing apologies and damages which he donated to children’s charities.

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Lord McAlpine v ITV & Phillip Schofield (2012): Allegations of the claimant's being a suspected paedophile broadcast on ITV's early morning news programme. Damages close to the top of the permissible range were recovered together with apologies on air and in open court.

Lord McAlpine v BBC (2012): BBC 2's Newsnight claimed Lord McAlpine was a suspected paedophile who had abused children in a residential care home in North Wales following an investigation by reporters into the Jimmy Savile affair. The BBC apologised on air and in open court and paid Lord McAlpine damages at the top of the permissible range. This case contributed to the resignation of the then-Director General of the BBC.

Acting for a Northern Irish veterinary medicines company in a trade libel case brought against an English corporate competitor (2014).

Application of section 8 of the Defamation Act 1996 (summary relief). Mawdsley v Guardian Newspapers (2002). The claimant was a Christian missionary and Conservative Party activist whose motives for being in Burma were criticised by the newspaper. The issue before the court was whether the claimant was under a duty to accept an apology to mitigate the damage to his reputation.

Recovered substantial damages from Mirror Group Newspapers for an African-American female professional boxing judge falsely accused of corruptly scoring the Lennox Lewis/Evander Holyfield title fight in favour of her fellow American.

Recovered substantial damages for Maneka Ghandi, an Indian Government cabinet minister and widow of Indira Gandhi's younger son, Sanjay, falsely implicated in a murder in a biography of her late mother-in-law.

Recovered substantial damages for former MP and Government minister, Edwina Currie, accused in the Daily Express of being "The Vilest Woman in Britain" in an article published shortly after the 1997 general election.

Recovered substantial damages for a British-Nigerian singer who was a Conservative candidate for the Greater London Assembly falsely accused in the Guardian of being a supporter of South African apartheid.

Acted for Vladimir Matushevitch, a Russian ex-patriot journalist working for Radio Liberty against Vladimir Telnikoff, a human rights activist and journalist working for the BBC Russian Service, who sued on the defendant's letter published in the Daily Telegraph, suggesting Telnikoff was advocating a racist recruitment policy for Russian language broadcasters in the west. The case went to the House of Lords on the elements of the defence of fair comment.

Acted for Sarah Keays against a magazine that claimed she had written a "kiss'n'tell" book about her life with Conservative cabinet minister Cecil Parkinson. The case considered the Court's jurisdiction to decide the question of defamatory meaning as a preliminary issue; she subsequently recovered £100,000 at trial. The process of asking the court to find the meaning of the publication complained of as a preliminary issue is now standard in defamation actions.

Appeared for second defendant in "War Criminal" action brought by Lord Aldington, former Conservative cabinet Minister. Aldington v Tolstoy & Watts (1989).

Appeared for Daily Mail led by Lord Rawlinson QC and Richard Rampton in 6-month jury trial – at the time the longest ever civil jury trial and one of the reasons why Parliament later decided to restrict jury trials in defamation – and in the Court of Appeal and House of Lords hearings in the action brought by the 'Moonies' (1979-81).

Breach of medico-legal confidence: in Cornelius v de Taranto [2001] Edward acted for a teacher who consulted a psychiatrist for an expert report with a view to using it as evidence in a claim for constructive dismissal. The report was published beyond the claimant's solicitors to other recipients within the NHS in breach of confidence.

# Corporate Financial Crime / Deferred Prosecution Agreements

Having introduced Deferred Prosecution Agreements into this jurisdiction when Solicitor General, Edward was subsequently instructed by the SFO in the first DPA case, SFO v Standard Bank (2015) which involved the London office of a South African bank (now re-named and owned by a Chinese bank) accepting that its staff in Tanzania had bribed Tanzanian Treasury officials to gain a contract to provide a large loan for government infrastructure projects. The bank was charged with failing to prevent bribery under S7 of the Bribery Act 2010. The bank and the SFO, after lengthy negotiations, agreed the penalty, the compensation, the duration of the deferment of the prosecution and the amount of the SFO's costs it would have to pay. Edward, leading another silk and a senior junior, successfully applied to Sir Brian Leveson, the President of the Queen's Bench Division, for the Court's approval of the DPA's terms under the Crime and Courts Act 2013.

In 2016/17 Edward again acted for the SFO in its largest ever investigation into allegations of bribery and corruption committed by Rolls-Royce in multiple foreign jurisdictions including Russia, Thailand, Indonesia, China, Nigeria and India between 1989 and 2012. He led a team of 6 counsel including a former First Senior Treasury Counsel and concluded an agreement with Rolls Royce which required it to pay over £1/2 billion in penalties, compensation and costs which was approved, after a 3-day hearing, by Sir Brian Leveson, following months of commercially, politically and economically sensitive negotiations with the company's lawyers and other states' prosecutors. The case involved complex public interest questions and interests of justice considerations, and difficult penalty assessments.

In 2020/21 Edward led the legal team for two respondent UK-based companies concerned with offences contrary to S1 and S7 of the Bribery Act 2010 in negotiations with the SFO resulting in 2 separate DPAs. The companies cannot be named for legal reasons. These DPAs, approved by Mrs Justice May on 19 July 2021, are the 11<sup>th</sup> and 12<sup>th</sup> DPAs to have been approved since the Crime and Courts Act 2013 came into force.

Edward has recently advised the CPS in relation to a potential DPA with a company whose directors were charged and prosecuted for bribery.

Edward is frequently asked to speak at conferences here and abroad about DPAs and to discuss them in the national and professional press and broadcast media. He wrote the chapter on DPAs in the 2nd edition of *Lissack & Horlick on Bribery* (2014).

## Featured Corporate Financial Crime / Deferred Prosecution Agreements cases

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SFO v Rolls-Royce PLC & Rolls-Royce Energy Systems Inc (January 2017)

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SFO v Standard Bank (November 2015)

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He also advises companies in relation to their criminal liabilities and on DPAs

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## International Human Rights

Edward is frequently instructed to advise overseas clients on human rights abuses and remedies, to give strategic advice to foreign government agencies, companies and individuals in matters affecting their reputations and conduct.

### Featured International Human Rights cases

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Edward acts for a dual US-Canadian citizen who has been subjected to and defamed by an Interpol Red Notice issued the Kyrgyz Republic authorities in breach of Interpol rules, his internationally recognised human rights and rule of law principles in order to apply pressure on the Canadian mining company of which he was some years ago the CEO to renegotiate the joint venture to do with the mine in Kyrgyzstan. Submissions are being made to Interpol's Commission for the Control of Files in Lyons.

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Edward is advising on the recovery of many US\$ millions from a Middle Eastern Government following judgment in the USA in favour of families of victims of terrorist attacks.

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Edward is leading in a claim on behalf of victims of terrorist attacks against a number of banks alleged to have made multimillion US\$ transfers to buy arms and explosives for terrorist groups used to kill and injure British soldiers and civilians in Iraq. The matter involves several ECHR, public interest and jurisdictional questions, and is politically sensitive, and factually and legally highly complex.

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Edward is leading Rachel Jones of Blackstone Chambers in relation to claims lodged in the ECtHR brought by a former Turkish MP and journalist against the Government of Turkey relating to his improper conviction and unlawful imprisonment.

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## Public Law and Judicial Review

Instructed by Herbert Smith Freehills, in September 2019 Edward led Tom Cleaver of Blackstone Chambers and Anna Hoffmann of 4 Pump Court in the Divisional and Supreme Courts in the intervention by former Prime Minister Sir John Major on the prorogation case: R (on the application of Miller) v The Prime Minister [2019] UKSC 41 against the current Prime Minister, Boris Johnson. In this case the Supreme Court held unanimously that the prorogation of Parliament in September 2019 had been unlawful, null and void, overturning the decision of the Divisional Court which had refused jurisdiction on the ground that the matter was political and not susceptible to judicial review.

## Financial Services

### Featured Financial Services cases

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Edward advised the Malta Financial Services Authority (MFSA) in late 2018 on (i) the probity and fitness of a bank in Malta to continue to hold a banking licence and of its CEO to continue in office following concerns expressed by authorities in the USA, London, the EU and Malta; and (ii) the political, diplomatic and reputational consequences of the bank's

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presence in Malta for the MFSA and the government of Malta. It was a highly sensitive matter with implications for Malta's relations with the EU and its member states, the Bank of England and HM Treasury, and the US Treasury and banking authorities. The individual concerned has now been arrested in the United States and the bank has been required to cease trading in Malta.

Edward is advising a high net worth foreign client, his family and his companies on their remedies and rights under the ECHR (including freedom of expression and religion, right to private property and nationality, and access to justice), as well as under English defamation and commercial law and the law of the foreign state. The case arises out of the confiscation of the client's financial assets & his media, hotel and mining interests, the detention without charge of a close family member, and the imposition of Government commissioners to manage his companies and is running in parallel with banking proceedings brought in London and the EU.

## Crime - Appeal Work

Edward has appeared in twenty-four Unduly Lenient Sentencing applications involving, amongst others, sentences for murder, rape and other sexual assaults against adults and children, the importation, distribution and sale of commercial quantities of Class A drugs, people trafficking for employment and sexual exploitation, kidnapping, and possession of firearms with intent to endanger life.

## Appointments

- Member of the Serious Fraud Office's panel of external counsel (2021)
- Co-chair of the Westminster Commission on Miscarriages of Justice Panel
- Life Peer (2018)
- Member of the Prosecution Counsel Panel for the Serious Fraud Office (2017-2021)
- Privy Counsellor (2015)
- Knighted (2012)
- HM Solicitor General (2010-12)
- QC (Northern Ireland) (2010)
- Bencher of the Middle Temple (2001)
- Crown Court Recorder (1998-2015)
- Parliamentary Fellow, St Antony's College, Oxford (1996-97)
- Independent Panel for Post Office's Historical Shortfall Scheme concerned with Horizon computer system failings

## Publications

- Contributing author to Lissack & Horlick on Bribery, 3rd Edition (2020) and Halsbury's Laws of England, Telecommunications and broadcasting (Vol. 45), 4th Edition (1985).
- Report on Abuses of Human Rights and the Rule of Law in Turkey (jointly with Lord Woolf, Sir Jeffrey Jowell QC and Sarah Palin), 2015.
- Edward has written widely on defamation, media law, human rights, jury trial and other legal and related public

policy issues, and been published in The Times, The Independent and the legal press. He appears regularly on television and radio.

## Education

- MA Hons (Oxon)

## Recommendations

- Has a first-class legal brain and excellent judgement
- He knows the law and expresses it in a way that is accessible
- Very clear headed in his approach
- He's very experienced, very calm under pressure and a calming influence in tricky situations
- A brilliant strategist, who offers sage counsel to his clients
- He is absolutely charming, very down-to-earth, very eloquent with judges and makes complex issues straightforward
- In court, he's a polished street fighter who carries clout
- He is very approachable, and his political knowledge is a real asset