

# Landmark Chambers

## Barrister CV

Barney McCay



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# Barney McCay

Call: 2019

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Barney has a particular interest in public, planning and environmental, EU, public procurement and state aid law.



## Expertise

Planning, Environment, Property, Public and Administrative

## Contact Practice Managers

### Richard Bolton

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## Practice Summary

Barney accepts instructions across all Chambers' areas of practice.

### Barney's current and recent work includes:

- **National Lottery litigation:** Acting for the Gambling Commission in a challenge to its award of the Fourth National Lottery Licence (led by Sarah Hannaford KC). The claim was dismissed on the basis that the claimant did not have standing. See *IGT v The Gambling Commission* [2023] EWHC 1961, [2023] EWHC 1420 (TCC) and [2023] EWHC 2226 (TCC). Press coverage [here](#).
- **Supreme Court homelessness intervention:** Acting for Crisis in a strategic intervention that concerned the relief that should be granted after a local authority has breached its "full" homelessness duty (led by Justin Bates). See *Croydon LBC v Imam (Crisis intervening)* [2023] UKSC 45. Press coverage [here](#).
- **Asylum accommodation challenge:** Acting for the claimant in a challenge to the Home Secretary's decision to use a former RAF airfield to accommodate asylum seekers (led by Alex Goodman KC). See *R (Clarke-Holland) & Ors v SSHD & Ors* [2023] EWHC 3140 (Admin). Press coverage [here](#).
- **Procurement and subsidy control:** Advising and acting for economic operators and contracting authorities (local and central government) on the procurement and subsidy control implications of development agreements, land acquisitions,

supplier relief, and funding arrangements.

- **Planning judicial review:** Acting as sole counsel in proceedings before the High Court which challenged an authority's decision to grant permission for restaurant development. The claim was successful. See *Ariyo v Richmond LBC* [2023] EWHC 2278 (Admin).
- **EU-derived and human rights:** Advising a national charity on the implications of the Retained EU Law (Revocation and Reform) Bill for environmental protections, and acting on behalf of the Aire Centre in deportation proceedings involving EUSS issues before the Upper Tribunal.
- **NHS trust funding:** Acting for an interested party to resist a claim for judicial review that concerned the circumstances in which an NHS trust was entitled to section 106 contributions (led by Zack Simons). The claim was dismissed. See *R (Worcestershire Acute Hospitals NHS Trust) v Malvern Hills DC* [2023] EWHC 1995 (Admin). Press coverage [here](#).
- **Portland ERF Inquiry:** Acting as sole counsel for two R6 parties at a three-week public inquiry which considered whether an energy recovery facility should be constructed on the Isle of Portland in close proximity to the Bibby Stockholm Barge and Jurassic Coast World Heritage Site. Press coverage [here](#).

Barney graduated from Cambridge with a degree in History and Politics (First Class). He was awarded Gray's Inn's top scholarships to undertake the GDL (Distinction) and Bar Course (Outstanding). Barney also has an LLM from the UPenn (Distinction) and was awarded/offered a Thouron Fellowship and Fulbright Award.

Before joining Landmark, Barney worked in competition and state aid policy and as a political adviser to an MP. After converting to law, Barney worked as a Judicial Assistant to Lord Justice Bean in the Court of Appeal on cases which involved media, equality, public, information, commercial, and EU law.

## Planning

**Barney practises in planning and environmental law, as well as related areas such as public procurement and subsidy control. He regularly appears in the High Court and at public inquiries. Barney's recent planning and infrastructure work includes:**

- **NHS trust funding:** Acting for an interested party to resist a claim for judicial review that concerned the circumstances in which an NHS trust was entitled to section 106 contributions (led by Zack Simons). The claim was dismissed. See *R (Worcestershire Acute Hospitals NHS Trust) v Malvern Hills DC* [2023] EWHC 1995 (Admin). Press coverage [here](#).
- **Portland ERF Inquiry:** Acting as sole counsel for two R6 parties at a three-week public inquiry which considered whether an energy recovery facility should be constructed on the Isle of Portland in close proximity to the Bibby Stockholm Barge and Jurassic Coast World Heritage Site. Press coverage [here](#).
- **Asylum accommodation challenge:** Acting for the claimant in a challenge to the Home Secretary's decision to use a former RAF airfield to accommodate asylum seekers (led by Alex Goodman KC). See *R (Clarke-Holland) & Ors v SSHD & Ors* [2023] EWHC 3140 (Admin). Press coverage [here](#).
- **Planning judicial review:** Acting as sole counsel in proceedings before the High Court which challenged an authority's decision to grant permission for restaurant development. See *Ariyo v Richmond LBC* [2023] EWHC 2278 (Admin).

- **Morning Mills Farm:** Acting for the developer at an inquiry which examined a proposal for 700 dwellings (led by John Litton KC). The appeal was allowed with full costs less than three weeks after the inquiry.
- **NW Bicester Ecotown:** Acting for the developer at the North West Bicester Ecotown inquiry, which concerned a proposal for 530 dwellings (led by Zack Simons). The appeal was allowed.
- **Energy infrastructure:** Acting in a challenge to the Secretary of State's decision to consent to a new coal mine in Whitehaven, Cumbria. Press coverage [here](#).

During pupillage, Barney was supervised by Richard Turney and worked on the Northumberland Line railway scheme and judicial review proceedings that concerned the compatibility of the Government's "net zero" target with its approach to oil and gas extraction (**Cox v OGA** [2022] EWHC 75 (Admin)). He also worked with other members of chambers (including Lord Carnwath) on various planning and environmental issues.

Barney is a co-convenor of a UKELA working group and a contributor to Garner's Environmental Law (air quality).

## Environment

**Barney practises in environmental law. He regularly appears in the High Court and at public inquiries. Barney's recent environmental work includes:**

- **Asylum accommodation challenge:** Acting for the claimant in a challenge to the Home Secretary's decision to use a former RAF airfield to accommodate asylum seekers (led by Alex Goodman KC). See **R (Clarke-Holland) & Ors v SSHD & Ors** [2023] EWHC 3140 (Admin). Press coverage [here](#).
- **EU-derived and human rights:** Advising a national charity on the implications of the Retained EU Law (Revocation and Reform) Bill for environmental protections.
- **Portland ERF Inquiry:** Acting as sole counsel for two R6 parties at a three-week public inquiry which considered whether an energy recovery facility should be constructed on the Isle of Portland in close proximity to the Bibby Stockholm Barge and Jurassic Coast World Heritage Site. Press coverage [here](#).
- **Energy infrastructure:** Acting in a challenge to the Secretary of State's decision to consent to a new coal mine in Whitehaven, Cumbria. Press coverage [here](#).
- **"Fast-growing" chickens:** Acting in a challenge to Defra's purported policy on the keeping of "fast-growing" chickens (led by Richard Turney). Press coverage [here](#).
- **Brighton traffic scheme:** Acting as sole counsel in judicial review proceedings against the decision of a local authority to grant a temporary traffic regulation order authorising buses to be diverted along residential roads that had been subject to a weight restriction order. The case raised air quality issues and settled on favourable terms. Press coverage [here](#).
- **Environmental protections:** Advising a national charity on the implications of the Retained EU Law (Revocation and Reform) Bill for environmental protections.

During pupillage, Barney was supervised by Richard Turney and worked on judicial review proceedings that concerned the compatibility of the Government's "net zero" target with its approach to oil and gas extraction (**Cox v OGA** [2022] EWHC 75

(Admin)).

Barney is a co-convenor of a UKELA working group and a contributor to Garner's Environmental Law (air quality).

## Property

**Barney has experience in property, protest and housing matters. Barney's recent work includes:**

- **Homelessness:** Acting for Crisis (with Justin Bates and Harriet Wakeman) in an intervention before the Supreme Court concerning the relief that should be granted after a local authority has been found to have breached its "full" homelessness duty.
- **Allocation:** Acting in judicial review proceedings that concern a local authority's decision not to provide accommodation outside of its allocation scheme
- **Injunctive relief:** Acting for a homeless applicant seeking urgent interim relief after being evicted.

During pupillage, Barney was supervised by Justin Bates and gained experience in a range of property and housing law matters, including:

- Assisting with an appeal to the Supreme Court on whether a landlord could terminate a flexible tenancy agreement prior to the expiry of the fixed term without an express re-entry or forfeiture provision (**Croydon BC v Kalonga** [2022] UKSC 7).
- Assisting with an appeal to the Court of Appeal on whether a company could lawfully sign a section 8 notice (**Northwood (Solihull) Ltd v Fearn** [2022] EWCA Civ 40).
- Advising on the powers of a local authority to restrict sub-letting and HMOs in right-to-buy flats.

Barney also assisted with urgent interim injunction proceedings that concerned anticipated protest activity at an oil refinery.

## Public and Administrative

**Barney has a broad public law practice. He has particular experience in matters concerning human rights, EU, education, health, social security, information, equality and housing law. Barney's recent and current work includes:**

- **Supreme Court homelessness intervention:** Acting for Crisis in a strategic intervention that concerned the relief that should be granted after a local authority has breached its "full" homelessness duty (led by Justin Bates). See **Croydon LBC v Imam (Crisis intervening)** [2023] UKSC 45. Press coverage [here](#).
- **Asylum accommodation challenge:** Acting for the claimant in a challenge to the Home Secretary's decision to use a former RAF airfield to accommodate asylum seekers (led by Alex Goodman KC). See **R (Clarke-Holland) & Ors v SSHD & Ors** [2023] EWHC 3140 (Admin). Press coverage [here](#).
- **EU-derived and human rights:** Advising a national charity on the implications of the Retained EU Law (Revocation and Reform) Bill for environmental protections, and acting on behalf of the Aire Centre in deportation proceedings involving EUSS issues before the Upper Tribunal.

- **NHS trust funding:** Acting for an interested party to resist a claim for judicial review that concerned the circumstances in which an NHS trust was entitled to section 106 contributions (led by Zack Simons). The claim was dismissed. See **R (Worcestershire Acute Hospitals NHS Trust) v Malvern Hills DC** [2023] EWHC 1995 (Admin). Press coverage [here](#).
- **Education:** Acting in school exclusion reviews and SEND tribunal hearings, and judicial review proceedings concerning an Ofsted inspection (led by Fiona Scolding KC).
- **“Fast-growing” chickens:** Acting in a challenge to Defra’s purported policy on the keeping of “fast-growing” chickens (led by Richard Turney). Press coverage [here](#).
- **Discrimination and international law:** Acting in proceedings that involve provisions of the Withdrawal Agreement and Article 14 ECHR.
- **Social security:** Acting in various challenges to decisions of the DWP, including a successful appeal to the Upper Tribunal concerning entitlement to carer’s allowance.

Before pupillage, Barney worked at the Public Law Project and as a Judicial Assistant in the Court of Appeal. During pupillage, Barney was supervised by Julia Smyth. Prior to and during pupillage, Barney therefore gained experience in a range of areas including:

- **European Union:** advising on the Withdrawal Agreement and Northern Ireland Protocol; and working on Brexit-related cases such as a judicial review (ongoing) of the compatibility of the Government’s policy regarding EU and EFTA citizens’ rights of residence with its obligations under the Withdrawal Agreement and EEA EFTA Separation Agreement (**IMA v Secretary of State for the Home Department**).
- **International:** advising on the interpretation of the Vienna Convention
- **Protest:** working on the Northern Ireland Human Rights Commission’s intervention in a challenge to the Northern Ireland Assembly’s decision to legislate for “safe space” zones outside abortion clinics.
- **Immigration:** working on Rule 39 injunction proceedings before the European Court of Human Rights
- **Social security:** advising on the applicability of A1P1 ECHR to social security payments
- **Health:** working on Court of Appeal proceedings in which certain provisions of the Abortion Act 1967 were challenged under Article 8 ECHR (**Crowter v Secretary of State for Health**).
- **Equality and discrimination** (as a Judicial Assistant): working on challenges to the “Right to Rent” policy, “No Resource to Public Funds” scheme, and covid furlough scheme.
- **Inquests and inquiries** (as a Judicial Assistant): working on a challenge to the scope of the inquest into the death of the victim of the Salisbury Novichok poisonings (**Sturgess v HM Senior Coroner for Wiltshire & Ors** [2020] EWHC 2007 (Admin)).
- **Information** (as a Judicial Assistant): working on a challenge to the retention of criminal conviction records (**QSA & Ors v National Police Chiefs Council and Secretary of State for the Home Department** [2021] EWHC 272 (Admin)).

Procurement and Subsidy Control

Barney has considerable experience in public procurement, competition and state aid matters.

**Barney's recent work includes:**

- **National Lottery Licence:** Acting (with Sarah Hannaford KC, James Neill and Rose Grogan) in a high-profile public procurement challenge to the Gambling Commission's award of the National Lottery licence. Press coverage [here](#).
- **"Fast-growing" chickens:** Acting (with Richard Turney) in a challenge to Defra's purported policy on the keeping of "fast-growing" chickens, which raises issues of competition law. Press coverage [here](#).
- **Trade and Cooperation Agreement:** Advising on the state aid and procurement implications of an application for central government funding, including the relevance and interpretation of provisions of the Trade and Cooperation Agreement.
- **Covid-19 procurement measures:** Acting for contracting authorities seeking to recover payments made to suppliers during the covid-19 pandemic under central government procurement guidance.
- **Local government contracts:** Acting for a bidder challenging the award of a multi-million-pound contract to a rival business. The authority agreed to re-run the procurement exercise in response to pre-action correspondence.

During pupillage, Barney worked on a range of contentious and non-contentious matters. These included:

- Advising an economic operator in a dispute arising from a procurement exercise for waste disposal services
- Advising a contracting authority on the public procurement and state aid implications of a proposed land acquisition.
- Advising an economic operator challenging a procurement exercise in the regeneration sector
- Advising central government on the circumstances in which a procurement exercise needs to be conducted for agreements between contracting authorities.

Before joining Landmark, Barney won the Rosie Choueka Essay Prize (a competition run by the Procurement Lawyers' Association) and took MBA courses on fiscal policy and subsidy control at Wharton. He also worked in competition, consumer and state aid policy for a national charity and helped coordinate its "super-complaint" to the Competition and Markets Authority.

## Qualifications

- Cambridge University, King's College – BA History and Politics (First Class)
- BPP University – GDL (Distinction)
- City University – BPTC (Outstanding)
- University of Pennsylvania – LLM (Distinction)

## Cases and inquiries

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|----------|---|
| 22 08 24 | Appeal allowed to enable Harold Wood hospital re-development  |
| 13 08 24 | Court of Appeal decides case about the interpretation of planning permissions                         |
| 07 12 23 | High Court dismisses challenges to government's use of former airfields to accommodate asylum seekers |
| 28 11 23 | Supreme Court hands down judgment on homelessness and enforcement of public law duties                |