

Angela Grahame KC (Scot)

Year of Call: 1995
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Overview

Angela Grahame KC (Scot) has been in practice in Scotland since 1995 and became a silk in Scotland in 2009. She was called in England & Wales in 2019. She is the first practising female KC from the Scottish Bar to practice at the Bar in England and Wales.

Angela has extensive experience in many challenging and high-profile personal injury, clinical negligence and abuse cases. She is the Vice Dean of the Scottish Bar - the equivalent of the Vice Chair - and the second most senior Advocate in Scotland.

Angela was the lead counsel in the Vale of Leven Public Inquiry for Greater Glasgow Health Board, the largest Health Board in Scotland. This Inquiry was tasked with investigating how 131 patients had contracted the Hospital Acquired Infection, C Difficile and the cause of death of 34 of those patients.

She was also lead counsel representing the Lord Advocate, the chief legal officer of the Scottish Government and the Crown in Scotland, in the Fingerprint Inquiry following the Shirley McKie trial. This Inquiry changed fundamentally the procedures for Fingerprint investigations in all criminal cases across Scotland.

Angela is regularly in court and has conducted many proofs (evidential hearings), legal debates and hearings in the Court of Session, including those relating to personal injury and clinical negligence claims.

Angela has been instructed as lead counsel and negotiated settlements in many multi-million pound claims. These have included catastrophic brain injury cases which involve 24-hour care and reduced life expectancy.

Angela spent four years as a full time prosecutor, known as Crown Counsel in Scotland (Advocate Depute and Senior Advocate Depute), conducting complex and serious High Court criminal trials, Criminal Appeal Court cases and appeals in the Judicial Committee of the Privy Council. Angela was appointed as an ad hoc Advocate Depute by the Lord Advocate in 2017.

In addition to the above, Angela has been pivotal as counsel arguing cases which have sought to extend the law of liability for sexual abuse. She has been instructed in complex harassment cases. She has also been lead counsel in claims which sought to develop the law in relation to Article 2 claims under ECHR. She was instructed for the International Oil Pollution Compensation Fund in the well-known "Braer disaster actions". Additionally, she has experience in commercial actions, contractual disputes and some judicial review.

Angela is highly regarded by instructing agents for her astute tactical awareness, highly effective negotiation skills and advocacy ability.

She is very interested in the use of other forms of dispute resolution in personal injury and clinical negligence claims; and is one of very few Senior Counsel at the Scottish Bar with high level arbitration qualifications. In 2017 she attained Membership level of the Chartered Institute of Arbitrators and was fast-tracked to the Fellowship Course in 2018, passing the Fellowship Examination in Arbitral Practice and Procedure and Award Writing with one of the highest marks in Scotland. She attained

Fellowship following the requisite oral interview. Her interest in Additional Dispute Resolution continues as she is now studying to become an accredited Mediator.

In 2018, she was appointed as Honorary Lecturer in the School of Law, University of Aberdeen and has and will lecture in both international arbitration and clinical negligence.

As well as her extensive Personal Injury and Clinical Negligence practices, Angela has acted in numerous significant cases.

For example she was involved in The Braer Claims. The MV Braer was an oil tanker which ran aground during a storm off Shetland, Scotland, in January 1993, and a week later broke up causing catastrophic pollution. For over 10 years, Angela was instructed by the International Oil Pollution Compensation Authority in 200+ claims for damages for breach of contract/delict, arising out of the Braer grounding. Some of these cases were:

- The Fowlie Claims unreported (6 conjoined actions under the Merchant Shipping (Oil Pollution) Act 1971 for compensation for damage to asbestos cement roofing materials; per Lord Gill)
- Anderson v Griffiths (Unreported) 1 December 2004
- Shetland Sea Farms v Skuld & Ors, (Unreported) 28 May 2003
- Anderson & Ors (Unreported) 8 March 2001 per Lord Gill
- Anderson & Ors v Skuld (Unreported) 14 February 2001
- Flaws v IOPCF 2001 SLT 897 (Procedure Roll; Action of Declarator; Contract; Offer and acceptance; Time for acceptance; whether within reasonable time)
- Flaws v IOPCF 2002 SLT 270 (Inner House) (contract; formation; offer and acceptance; time for acceptance; whether within reasonable time).

Angela has appeared before the Judicial Committee of the Privy Council in:

- Holland v HMA [2005] UKPC D 1; 2005 1 S.C. (P.C.) 3; 2005 S.L.T. 563; (Human Rights; Devolution Issue; Disclosure; Evidence)
- Sinclair (Alvin Lee) v HMA [2005] UKPC D 2; 2005 1 S.C. (P.C.) 28; 2005 S.L.T. 553; (Human Rights; Devolution Issue; Disclosure; Procedure)
- Robertson v Higson; O'Dalaigh v Higson; Ruddy v McLeod (reported as Robertson v Frame) [2006] UKPC D 2; 2006 S.C. (P.C.) 22; 2006 S.L.T. 478 (Human Rights; Devolution issue; Acquiescence; Temporary Sheriffs)

She appeared for the Crown in the important Full Bench (5 judge) decision in:

Fleming v HMA [2006] HCJAC 64; 2007 J.C. 44; 2006 S.C.C.R. 594 (full bench) (extension to timebar; interpretation of transitional provisions); and in **MacDonald v McGowan** [2010] HCJAC 36; 2010 J.C. 219; 2010 S.L.T. 735 (plea in bar of trial; "acceptable plea" letters)

Recommendations

Angela was Commended in the Category of Silk of the Year 2018 at the Law Awards of Scotland 2018.

Chambers UK Bar 2018 – Ranked in the category of Personal Injury – "She has a fearsome intellect, is very good with clients and is very compassionate". "She has an excellent matter and command of negotiations. You can be confident that she has things in hand."

Chambers UK Bar 2017 - Ranked in the category of Personal Injury - "Angela Grahame QC has a varied practice spanning road traffic accident, employers' liability, catastrophic injury and industrial disease claims. Sources appreciate her approachable nature and experience in personal injury matters." "She is incredibly detailed and excellent in Court. No matter what happens

in Court, she always handles it superbly"

Chambers UK Bar 2016 - Ranked in the category of Personal Injury - "Angela Grahame QC has expertise in a wide array of personal injury matters including road traffic accident claims, employers' liability and catastrophic injuries. She is also experienced in cases concerning industrial diseases and property damage." "She has a broad breadth of knowledge and is very good on her feet" "She's very thorough and measured"

Legal 500 2016 - Ranked in the category of Personal Injury, Medical Negligence and Professional Negligence - "Trustworthy, reliable and quick-witted"

Chambers UK Bar 2015 - Ranked in the category of Personal Injury - "There are not many counsel as expert in the industrial disease area as her." "She'll fight your corner and your client's corner."

Legal 500 2014 - Ranked in the category of Personal Injury, Medical Negligence and Professional Negligence - "Calm, detailed and well prepared in court, with excellent negotiation skills."

Academic qualifications

- LLM (ongoing, 2020)) - University of Aberdeen
- PGCertICArb - University of Aberdeen
- DipLP - University of Aberdeen
- LLB (Hons) - University of Aberdeen

Professional qualifications & appointments

Appointments at the Scottish Bar (Faculty of Advocates)

- Appointed Advocate Depute (April 2003 – July 2005)
- Appointed Senior Advocate Depute (July 2005 – April 2007)
- Appointed to the Police Appeals Tribunal as Chair and Legal Member (April 2013 – date)
- Appointed ad hoc Advocate Depute (2017 – date)
- Angela is the Secretary and Treasurer of the International Bar Association (IBA) Forum for Barristers and Advocates (2017 to date)
- Angela has been appointed by the University of Edinburgh as a Coach for the Willem C Vis International Commercial Arbitration Moot, Vienna (2018)
- Appointed as a Member of the Task & Finish Group set up by Dame Clare Marx and now chaired by Leslie Thomson, in the Independent Review into Gross Negligence Manslaughter (and Culpable Homicide in Scotland) in the medical profession (2018
- Appointed as a Member of the Victims Task Force co-chaired by the Justice Secretary, Humza Yousaf and the Lord Advocate, James Wolffe QC in December (2018).
- Appointed by Scottish Mediation Network, with support from the Scottish Government, to become a member of the group undertaking a research project into the use of mediation in the context of civil justice (2018).
- Appointed as Honorary Lecturer at the University of Aberdeen, School of Law (2018)

Professional bodies

- Member of the Chartered Institute of Arbitrators (2017 – 2018)
- Fellow of the Chartered Institute of Arbitrators (2018 -)

- The JURIS Roster of International Arbitrators: https://arbitrationlaw.com/profile/angela-t-grahame (US)
- GCC Commercial Arbitration Centre (Bahrain)
- DIFC-LCIA Arbitration Centre (Dubai) (List)
- Faculty of Advocates (FDRS)
- She is member of ArbitralWomen
- Legal Member and now Chair of the Police Appeals Tribunal (2013-)

She is frequently called upon to give lectures on Arbitration. (List available on demand). As examples Angela has lectured in the University of Aberdeen and Robert Gordon University, at the Faculty's Arbitration Conferences and to the Scottish Branch of the Chartered Institute of Arbitrators.

· Curator of the Library (1999 to 2001);

· Member of Disciplinary Rules: Investigating Committee (1999 – 2001);

· Faculty Representative on Employer Liaison Committee at Aberdeen University (2001 - 2003);

· Member of Response Review Group (2001 – 2003; 2007 to 2010);

· Member of the Board of Assessors (2007 to date);

· Member of the Faculty Response Committee on the Criminal Justice (Scotland) Bill (2013);

· Co-Director of Compass Chambers (2015 -2016);

· Member and now Convener ex officio of the Complaints Committee (2015 to date)

· Vice Dean of the Faculty of Advocates (2016-date).

Expertise

Personal Injury

Angela's expertise in this area is consistently recognised in the leading legal Directories, Chambers UK and the Legal 500. Comments have included: "She has expertise in a wide array of personal injury matters including road traffic accident claims, employers' liability and catastrophic injuries. She is also experienced in cases concerning industrial diseases and property damage" and "She has a broad breadth of knowledge and is very good on her feet"; "She's very thorough and measured"; "Sources appreciate her approachable nature and experience in personal injury matters"; "She is incredibly detailed and excellent in Court. No matter what happens in Court, she always handles it superbly."

The following are some of her reported cases in this area:

Gracie v City of Edinburgh Council [2018] CSOH 37
This was an action of damages raised by a former pupil against a local education authority for injuries sustained in an accident in 1965, the pursuer's motion to allow a Minute of Amendment was refused as he had failed to aver "exceptional circumstances" justifying the exercise of the court's discretion under s. 19A of the Prescription and Limitation (Scotland) Act 1973. The Court determined that it would not be equitable to allow the action to proceed.

Phensrisai v Yutikan 2017 SLT 631
A proof on quantum in a fatal road traffic collision where a former Buddhist monk studying for a PhD sustained spine and chest fractures and sought damages for past and future losses and miscellaneous costs.

Dr Prescott v University of St Andrews [2016] CSOH 3
The pursuer alleged he contracted mesothelioma as a result of exposure to asbestos during his employment with the University when he entered the Old Library building when construction works were ongoing. No Scottish cases have gone to proof in relation to similar circumstances. This is almost the only time a mesothelioma case has proceeded to proof in Scotland. All issues (apart from diagnosis and quantum) were in dispute – the key issues for the Court were those of exposure; negligent exposure; and causation). The Court heard evidence from Dr Moore Gillon, the defenders expert, an internationally renowned expert. The pursuer in the event did not manage to discharge the issues of exposure and causation.

McShane v Burnwynd Racing Stables [2015] CSOH 70; 2015 Rep LR 107
The pursuer was a horse trainer. He was training a horse on a gallop when the horse fell on him and he sustained a serious shoulder injury which rendered him incapable of working. The pursuer alleged that this was due to the poor state of the gallop. Arguments were made in terms of the Workplace (Health, Safety & Welfare) Regulations 1992 and also in relation to the Work at Height Regulations 2005, in respect of which there were no reported cases. This was a very complicated case due to last minute issues which arose, which required changes to the pleadings and further investigations and expert evidence. The Court held that the gallop had not been defective.

Talbot v Babcock International Ltd & Anr [2014] CSOH 160; 2014 S.L.T. 1077
An industrial disease claim. The defenders lodged a Minute of Tender for provisional damages in the usual terms, which was accepted. When the matter came before the court the defenders attempted to impose further restrictions on the return conditions, not contained within the Tender. This case has had consequences for agents drafting Tenders in the future, where they offer provisional damages or they wish the Tender to be conditional in some way.

Shields v Crossroads (Orkney) Ltd [2013] CSOH 144; 2014 S.L.T. 190; 2013 S.C.L.R. 730
This was a Procedure Roll debate before Lord Pentland. The action was brought by a carer against the employer of a social worker assigned to her case in respect of serious injury to her mental health and certain financial losses, following a brief love affair between herself and the social worker. The case is important as it sought to expand the scope and extent of the common law by examining whether the employer had to take reasonable care for the carer's safety and to protect her against the employee's conduct. The Court held ultimately that there was no basis upon which it would be fair, just and reasonable for the common law to impose a duty on the social worker not to enter into a relationship with her. The case is an authority in this respect.

Police Federation Personal Injury Claims

- Law v Chief Constable [2015] (negligence during a training exercise; police officer injured during training)
- Stevenson v Chief Constable [2014] (negligence; breach of duty of care; police officer injured during training exercise; whether safe system of work)
- Rankin v Chief Constable [2013] (proof before Lady Rae in relation to negligence during a training exercise; breach of duty of care)

Angela was also instructed in the first two reported cases in Scotland arising out of personal injury claims against the Police for injuries during training exercises.

- Franklin v Chief Constable of Grampian [2001 Rep LR; 2001 G.W.D. 19-752] (Negligence; Duty of care; Police officer injured during training exercise when injuries inflicted to his wrist by handcuffs; whether safe system of working (instructed by the Police Federation))
- Grant v Chief Constable of Grampian [2001 Rep LR; 2001 G.W.D. 15-583] (Negligence; Duty of care; Police officer injured during training exercise when struck with baton on his arm; whether safe system of working (instructed by the Police Federation))

Judicial Review / Criminal Injuries Compensation

Angela has also acted in other proceedings, relating to criminal injuries. For example, she has acted in a Judicial Review in relation to a claimant refused Criminal Injuries Compensation where contributory negligence was deducted.

AS, Petitioner [2013] CSOH 83; 2013 G.W.D. 22-422
Decisions by the First Tier Tribunal, Criminal Injuries Compensation, reducing an award of compensation by 40 per cent after having considered the applicant's conduct before, during or after the relevant incident, would be reduced and remitted to a differently constituted tribunal where the tribunal's approach was deficient.

Judicial Review (Criminal Injuries Compensation Claim)

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Decisions by the First Tier Tribunal, Criminal Injuries Compensation, reducing an award of compensation by 40 per cent after having considered the applicant's conduct before, during or after the relevant incident, would be reduced and remitted to a differently constituted tribunal where the tribunal's approach was deficient.

Angela also undertakes **travel claims** including many contractual claims brought under the Package Travel, Package Holidays and Package Tours Regulations 1992/3288.

Clinical Negligence

Angela has built up a well-deserved reputation in this area. The Directories refer to her being "calm, detailed and well prepared in court, with excellent negotiation skills" as well as "trustworthy, reliable and quick-witted."

Some of her cases are:

Anderson v Lothian Health Board [2018]
This clinical negligence claim was finally resolved after many years. It was a claim against a world-renowned Consultant Orthopeadic Surgeon, involving delay in surgery; negligence during the procedure itself; and failure to adequately review

post-surgery. After a number of years, the treatment to resolve ongoing issues resulted in the client having a stroke. There were significant issues around negligence; causation and quantum. This was a high value claim, including claims for future wage loss and future care.

Brits v Kilcoyne & Co [2017] CSOH 24; & see [2017] CSIH 47
This was a professional negligence claim against solicitors who had failed to raise an action before the expiry of the triennium. This was a debate at the instance of the pursuer before Lady Stacey. The pursuer argued that the defenders' pleadings in relation to waiver were irrelevant. The defenders sought an evidential hearing. The defenders' pleadings did not offer to prove that a statement by the employer's insurer in the early stages of litigation that the employer would not take a plea of time bar amounted to a unilateral promise or a waiver of the employer's right to later take that plea, and its averments relating to waiver were deleted from probation.

McLean v Argyll & Clyde Acute Hospitals NHS Trust [2017]
The account for this clinical negligence claim proceeded to the Auditor of the Court of Session in relation to the fees charged by counsel which was challenged in the Inner House. Angela was instructed to represent the interests of the Faculty of Advocates who were granted permission to intervene. This reclaiming motion involved novel and important questions of the role of the Auditor, breaches of natural justice, the balance between the duties of counsel in relation to the cab rank rule, what the Court expects of counsel in respect of the preparation to examine expert witnesses and the recovery of judicial expenses.

Reid v Forth Valley Health Board [2016]
This medical negligence claim proceeded under Chapter 42A procedure and involved a lengthy proof in March 2016. The case was about the death of a husband and father due to the alleged negligence of a nurse and a junior A&E doctor who made repeated unsuccessful attempts to reposition a displaced tracheostomy. As a result, the deceased went into cardiac arrest and died. There were separate claims against the nurse and the doctor in relation to their responsibilities and actions and experts on both sides. The family (the widow and son) claimed for loss of society/loss of support/services etc. and also a secondary victim claim for psychiatric injury (nervous shock) as a result of witnessing the deceased in the immediate aftermath.

ADR/NCDR

Arbitration/Mediation (ADR)

These proceedings are confidential, but Angela has been instructed both as counsel representing the parties to an arbitration and as an Arbitrator. A list of her cases is available on demand.

Publications

She has also published extensively on the subject, including:

- Parratt, D.R., and Grahame, A., '**Scotland**': (eds: Mistelis, Shore, Ribeiro), World Arbitration Reporter, 2nd Ed., (Juris Publishing, 2018)
- Grahame, A., **Recognition & Enforcement of Arbitral Awards in the United Kingdom**, The Journal of Enforcement of Arbitration Awards, (2018), Vol. 1, No: 1, page 41.
- Grahame, A., & Parratt, D.R., T**he Recognition and Enforcement of International Arbitral Awards: Is there a "Pro-Enforcement Bias" in the English Courts?**: The Journal of Enforcement of Arbitration Awards, (2019), Vol. 2 (forthcoming)
- Grahame, A., Chapter Contribution to: '**Women Pioneers in Dispute Resolution**', 2nd Edition, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH (2018).
- Grahame, A., **Multi-Tiered Dispute Resolution Clauses Requiring Mediation or "Friendly Discussions" - What Does That Mean?** (2019) (forthcoming)
- Grahame, A., **Conflicts of Interest and the Removal of Arbitrators on the Basis of Bias,** (2019) (forthcoming)

- Parratt, D.R., Foreman, P., & Grahame, A., **The Scottish Arbitration Handbook** (2nd ed.) (commissioned, 2020)

Angela was invited to give evidence before the Justice Committee, Scottish Parliament (2018). Their report of 1 October 2018 references her contribution to the discussion on Dispute Resolution methods. Read the report here