



James McGachie

Legal Director

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James McGachie is a litigator and regulatory lawyer, with particular focus in data privacy/information security; commercial dispute resolution, public and regulatory law (with a particular emphasis on investigations and inquiries), and intellectual property.

James acts in both national and international matters on behalf of clients in Scotland, the wider United Kingdom, and beyond. His work spans many sectors, including technology; consumer goods, food and retail; financial services; and infrastructure, construction and transport.

James is a member of the firm's Global Data Protection and Privacy team and, as a litigator by background, has a particular focus on contentious information law work, including a wide array of privacy litigation, data security breach responses, and contentious data subject requests. He is providing a number of clients with data breach and subject rights support in terms of responding to the obligations introduced following the introduction of the GDPR in May 2018. James also has significant experience in pursuing and responding to requests made under freedom of information and environmental information requests.

James is a regular commentator on data privacy issues in many reputable publications, including *Financier Worldwide*, *Lexis-Nexis* and *The Scotsman*. He regularly presents on the key risk and pressure points in relation to data privacy to organisations such as the Security Awareness Special Interest Group, the Information and Records Management Society, and the Law Society of Scotland. James also regularly provides updates to clients on data privacy through the firm's "What In-House Lawyers Need" (*WIN*) initiative and the firm's annual #TechSummit event.

- Litigation, Arbitration and Investigations
- Data Protection, Privacy and Security

- Technology
- Consumer Goods, Food and Retail
- Financial Services
- Infrastructure, Construction and Transport

- Advising an international outsourcing company in responding to a number of significant losses of highly sensitive personal data relating to vulnerable adults, and assisting in notification to the ICO and to affected data subjects; the regulator was sufficiently satisfied with the response to take no regulatory action when a significant fine was a potential response.
- Advising an international fast moving consumer goods business in responding to a malware attack using the PYSAs ransomware vector in the client's UK and African IT estate; working with IT forensics James developed a remedial and containment strategy and provided all advice on the client's regulatory obligations as a consequence of the incident.

- Advising an online dating website in responding to, and resolving, a claim for damages for distress received from a known author of class action litigation pertaining to allegations of unlawful data processing alleged to have occurred by way of marketing communications: assisting in reaching a negotiated settlement in respect of a matter that could have had wider precedent ramifications.
- Advising a pub owning business in relation to a number of both commercial and regulatory matters, in particular all interactions with the office of the Pubs Code Adjudicator since its creation in 2016 and the Pubs Code regime that affords certain new rights to its tenants. This work has included representing the business in all Pubs Code arbitrators with its tenants; and advising on all aspects of the Tied Pubs (Scotland) Bill which would introduce a broadly analogous regime in Scotland, including the preparation of legislative amendments based on our experience of the regime in England and Wales.
- Advising China Petroleum & Chemical Corporation (SINOPEC), the Chinese state oil company, in defending a multi-million claim for damages raised by a Norwegian company at the Court of Session in Edinburgh over a contractual dispute concerning the management of a semi-submersible oil rig in the North Sea. The dispute had been ongoing for fifteen years, including previous arbitral proceedings, before representation was transferred to DLA Piper and had amassed in the region of 300,000 documents in its lifetime. James managed a team that required to quickly familiarize itself with the history and commercial drivers behind the dispute, liaising extensively via video link from key stakeholders and witnesses based in Beijing. The dispute settled on terms favourable to our client within nine months of our initial instruction.
- Advising a major waste management company in utilising the freedom of information regime in terms of the clients' interests and making a number of freedom of information requests, followed by successful appeals (Decisions 230/2016, 231/2016, 125/2017, 156/2017) to the Scottish Information Commissioner in furtherance of the refusal to provide certain information in response to these requests.
- Advising a participant in relation to the Glasgow Clutha helicopter crash in 2013, including representation at a Fatal Accident Inquiry that commenced in April 2019 and which attracted significant public and media attention; no findings or recommendations were made against our clients (*FAI Determination by Sheriff Principal Turnbull [2019] FAI 46*).
- Advising a participant in relation to the 2020 Fatal Accident Inquiry in relation to deaths that occurred following the ditching of a Super Puma Helicopter in Sumburgh in August 2013 – the first hearing of its kind to be heard by way of a virtual platform (*FAI Determination by Sheriff Principal Pyle [2020] FAI 34*).
- Advising an international outsourcing business in relation to the procurement challenge raised by an unsuccessful bidder in relation to the decision of the Scottish Ministers to award a contract for the provision of ferry services to the Northern Isles to SERCO: the proceedings were ultimately successfully defended (*Shetland Line (1984) Limited v Scottish Ministers [2012] CSOH 99*).
- Advising a public body in carrying out a number of both statutory and non-statutory inquiries and investigations on behalf of in relation to governance within further education colleges which attracted significant public interest. This included acting on the body's behalf in conducting a review which proceeded under the body's recently introduced statutory powers to assess the fitness for practice of governance and management procedures within a college and which led to the Scottish Ministers exercising, for the first time, the power to review the Board of a College, a challenge to which was successfully defended (see *[2017] CSOH 45*). This role included advising on the scope/terms of reference of each investigation/inquiry; devising and executing the methodology; carrying out interviews with key stakeholders and witnesses; and preparing the report.

CREDENTIALS

Professional Qualifications

- Admitted as a Solicitor with the Law Society of Scotland

Prior Experience

James has significant advocacy experience in addition to 9 years' experience of dispute resolution work.

Recognitions

- James McGachie is ranked as a key lawyer by Chambers in the firm's commercial litigation and public and parliamentary affairs offering in Scotland. James has been commended by a number of multi-national clients:
 - “an absolute expert in his field and I am impressed by the breadth of his knowledge...he responds well to any requests and is keen

to tailor his response to exactly what his client wants – I have seen this through our implementation of GDPR wherein James audited us with a critical friend eye...in providing advice James is commercially focused and pragmatic in his responses and always demonstrates a good understanding of our business, when I know we are one of many he will be working with. James is also comfortable to challenge our thinking which is great."

- o *"clarity of thought and expression, personable manner, authenticity and resilience[that] have led to him becoming a very trusted adviser to our business."*
- o *"at all times very professional, astute and level-headed. I was always able to rely upon him giving sound and pragmatic advice with great attention to detail"*

Education

- University of Aberdeen, LLB (Hons), 2002
- University of Edinburgh, Diploma in Legal Practice, 2003

Memberships

- Law Society of Scotland

INSIGHTS

Publications

Global class actions briefing - Scottish emerging market

3 August 2020

On 31 July 2020, class actions (known as "group proceedings") will be permitted to be raised in the Scottish courts for the first time. The rules will allow two or more people with the same, similar, or related claims to pursue court proceedings in a single action.

New era for privacy and data breach Class Actions in the UK

12 May 2020

The recent decision in the Morrisons case and the judgment in Lloyd v Google have significant implications for the growth of privacy and data protection Class Actions in the UK. If this type of Class Action can progress, the risks for organisations who commit a data breach will be unprecedented.

Coronavirus: Impact on construction in Scotland

15 April 2020

COVID-19 guidance recently issued by the Scottish Government has had significant consequences for the construction industry, with many major sites ceasing "non-essential" works with immediate effect. However, the legal force and effect of this guidance must be considered - has the Government imposed a lawful prohibition on such works? This raises an interesting question - when is the law the law?

- Commentary to Bloomberg on a Scottish court challenge to the Prime Minister's desire for the UK to exit the EU on 31 October 2019 (Boris Johnson's Do or Die Brexit Vow Goes to Court), 4 October 2019
- Appearance on BBC's "The Nine" television news programme to provide analysis on the Supreme Court's consideration of the various appeals from throughout the UK concerning the Prime Minister's decision to prorogue Parliament, 17 September 2019

- Appearance on BBC Radio Scotland to explain the potential ramifications of a Scottish court challenge to the Prime Minister's decision to prorogue Parliament, 4 September 2019
- Thought Leadership Article - "*The nation's online security map is being redrawn*", The Scotsman Newspaper, 28 May 2018
- "*Data breach responses*" – commentary on how best to respond to risks and threats, Financier Worldwide, January 2018
- Thought Leadership Article – "*New court costs Bill could help access to justice*", The Scotsman Newspaper, 19 June 2017
- Thought Leadership Article – "*Subject Access Request violations are set to cost companies dearly*", The Scotsman Newspaper, 8 May 2017

Events

- "An introduction to Data Protection and Freedom of Information," DLA Piper What In-House Lawyers Need, May 12, 2015