

## Jonathan Kinnear QC

"Highly experience in handling large-scale bribery and corruption cases"  
Legal 500 2020



Year of Call: 1994 (Northern Ireland 1996)    QC: 2012

020 7353 5324

Jonathan Kinnear QC specialises in matters of real financial complexity often operating in the margins where the criminal and civil law meet. He has a multi-jurisdictional practice, regularly appearing in both the Criminal and Civil Divisions of the Court of Appeal, the Crown Court, the High Court and a range of Tribunal jurisdictions, in particular in respect of tax matters.

He has been instructed in a number of the most serious and complex fraud cases over the last 15 years and is regularly instructed to provide strategic advice in advance of charge or prosecution.

He is regularly instructed in large-scale review work, leading large teams of investigators, solicitors and counsel.

He has extensive experience in prosecuting and defending in the full spectrum of serious crime, including murder and major drugs conspiracies.

He also acts as a special advocate dealing with cases relating to national security and has particular expertise in relation to disclosure issues.

## What others say:

He is cited in both Directories the Legal 500 and Chambers UK Bar which have described him as:

*"Firm in his approach but fair." and "He is excellent and has proper expertise in VAT fraud and confiscation matters." Chambers UK 2020*

*"One of the brightest silks around – he's very strong in court and has real charisma." and "Highly*

### Location

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*recommended for his expertise in a wide array of white-collar crime cases including those relating to money laundering, revenue fraud and accountancy fraud. Regularly instructed to both prosecute and defend major clients in high-profile cases.” Chambers UK 2016*

## Business Crime & Financial Services

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Jonathan’s criminal practice focuses on the prosecution and defence of serious fraud, the related money laundering and subsequent confiscation proceedings. In recent years he has appeared in many of the most serious and complex cases both at first instance and in the Court of Appeal.

He has particular expertise in the area of international bribery and corruption, defending and prosecuting Government Ministers, high-ranking officials and multi-national companies. He is currently instructed by the SFO in a number of cases relating to international corruption in the oil industry.

Jonathan has a proven track record of taking the most complex of cases, uncovering the true issues and presenting them in a way in which a jury or other tribunal can easily understand.

For many years he has been a leading practitioner in MTIC carousel VAT fraud having been instructed in some of the largest and most serious cases brought by the RCPO and latterly the CPS.

Jonathan has extensive expertise in dealing with cases relating to direct taxation, including income tax, capital gains tax, NIC and PAYE, in particular, in relation to accountants, labour providers and “gangmasters”. He has an in-depth knowledge of accountancy procedure and the use of forensic accountants.

Jonathan has also been widely instructed to defend in SFO prosecutions involving the defrauding and theft of pension funds and Customs prosecutions relating to VAT offences, diversion fraud and the evasion of duty.

### **Asset Recovery, Restraint and Confiscation**

Jonathan also has extensive experience in the restraint and recovery of the proceeds of crime under both the CJA 1988 and POCA 2002 regimes. He appeared in the leading case in relation to the determination of realisable and hidden assets and in several leading cases in relation to the calculation of benefit.

He is currently instructed in several confiscation cases which involve benefit figures and realisable assets running into tens of millions of pounds and in matters relating to restraint and enforcement in the High Court and Court of Appeal.

He is often instructed to advise high net worth individuals in respect of restraint and enforcement issues.

## Notable Cases:

### **R v James Ibori**

[2018] 1 W.L.R. 3697

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I acted for the Crown in a series of appeals by James Ibori, the former Governor of the Delta State, Nigeria, his former solicitor Bhadrash Gohil following allegations of corruption against the MPS and allegations of misconduct against the original prosecuting team. I was responsible for leading a team which conducted a complete review of the safety of the convictions, which had been obtained over the course of 6 years and then defending those convictions in protracted proceedings in the Court of Appeal. All the convictions were upheld.

### **R v Bertling & Others**

Acted for the SFO in the successful prosecution of Bertling and 6 Directors and employees in respect bribes paid to a high ranking official of Sonangol, the Angolan national oil company, in order to secure lucrative freight forwarding contracts.

### **SFO v Z [2016] Lloyd's Rep. F.C. 157**

Acted for the SFO in the investigation and restraint proceedings against the former Ukrainian Minister for natural Resources.

### **Operation Fastback – R v C & Others**

Widely reported as the largest VAT fraud ever prosecuted, with an estimated loss to the Revenue of £365 million. Jonathan led two juniors on behalf of the Crown. An enormous case with 50,000 pages of statements and exhibits and millions of pages of unused material. The defendants eventually pleaded guilty 2 weeks into the listed trial. The case received substantial publicity in the national TV and print news.

### **R v Marsden and McIntosh – [2011] EWCA Crim 1501; [2011] 4 All E.R. 917; [2011] S.T.C. 2349; [2012] 1 Cr. App. R. (S.) 60; [2011] Lloyd's Rep. F.C. 577; [2011] Crim. L.R. 814; [2011] S.T.I. 1940;**

The leading case in relation to the calculation of realisable and hidden assets. Jonathan was leading counsel for the Crown in an appeal to the Court of Appeal in relation to 2 confiscation orders of £3.6 million each. The case involved a reconsideration of a number of the leading authorities in respect of realisable and hidden assets, in particular RCPO v Telli. The court clarified the test in relation to the calculation of hidden assets and the case is now the leading case on the topic. The orders were upheld.

### **R v Sander – [2009] EWCA Crim 2377; [2010] 1 Cr. App. R. 20 (p.285), [2011] 1 Cr. App. R. 6.**

Jonathan led for the Crown in the prosecution of Mr Sander in relation to the laundering of £7 million that was the proceeds of MTIC fraud. At the initial trial the jury were tampered with and the Judge ruled that he would complete the trial without a jury. This was the first time that such an order had been made under the new law. There followed 2 interlocutory appeals, both heard by the Lord Chief Justice. The case was eventually heard by the Recorder of Birmingham with a protected jury. The defendant was convicted on all counts.

### **R v Ahmed and Ahmad – [2012] EWCA Crim 391; [2012] S.T.I. 546.**

A confiscation case that resulted in orders of £184 million being made, the largest ever in the UK and which eventually made it to the Supreme Court. In proceedings that have lasted over 10 years Jonathan acted for the Crown and in 2017 obtained enforcement orders in the High Court in respect of millions of pounds worth of

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property.

### **Operation Decade, R v Warman and others**

Jonathan led two juniors in the successful prosecution of an accountant and two property developers charged with evading over £1 million in income tax, through the double manipulation of their accounts and tax returns. The case involved the management of over one million pages of unused material and extensive evidence from forensic accountants. Jonathan conducted the confiscation proceedings at first instance and in the Court of Appeal, leading to an order of over £1 million.

### **Operation Inertia – R v Ravjani**

This was a very substantial MTIC fraud prosecution. The loss to the Revenue was in excess of £175 million. There have been 4 trials, leading to the conviction of 15 defendants. Jonathan acted as the lead disclosure counsel, in a team of 5 counsel, and was responsible for all disclosure policy and issues at substantive hearings. The first defendant received a sentence of 17 years, believed to be the longest sentence ever imposed for fraud. Jonathan conducted the very substantial confiscation proceedings, which led to substantial orders and default sentences.

## Tax

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Jonathan has a very significant indirect tax practice, specialising in VAT, excise and other customs duties and has appeared in many of the most complex cases across the full range of jurisdictions, the Tax Tribunals, the Administrative Court and the Civil Division of the Court of Appeal. In 2016 and 2017 he appeared in the two leading Court of Appeal decisions in respect of the application of the *Kittel* principle and the jurisdiction of the UT on appeal.

Jonathan is Head of the 2 Hare Court tax team.

Having originally gained years of experience in the criminal prosecution of the most serious and complex tax cases he has brought and applied his advocacy, trial acumen and incisive cross-examination to the Tax Tribunals and civil courts.

He has conducted scores of cases in the FTT and UT over the last 10 years with a total value of several hundred million.

## Notable Cases:

### **HMRC v Citibank & Ebuyer – [2017] EWCA Civ 1416; [2017] B.V.C. 47**

Successfully acted for HMRC in the Court of Appeal Civil Division, which overturned the decision of the UT, concluding that HMRC did not have to plead dishonesty on the taxpayer's part in missing-trader fraud cases, because dishonesty was not part of the knowledge element of the *Kittel* test.

### **HMRC v Davis & Dann – [2016] EWCA Civ 142; [2016] S.T.C. 1236; [2016] B.V.C. 11; [2016] S.T.I. 1157;**

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Successfully acted for HMRC in the Court of Appeal Civil Division – The Upper Tribunal had erred in overturning a determination by the First-tier Tribunal that a trader seeking a VAT repayment of over £8 million in connection with its large-scale purchase of razor blades ought to have known that the only reasonable explanation for its transactions was that they were connected with VAT fraud. The Upper Tribunal had not looked at the totality of the evidence, and its conclusion that the transactions could be seen as ordinary market transactions was not supported by the evidence.

### **HMRC v Safe Cellars [2017] EWHC 1957 (QB);**

In 2016 and 2017 Jonathan acted for HMRC in all of the multi-jurisdictional cases in respect of Safe Cellars, which involved the revocation of its WOWGR and other authorisations. This included substantive appeal proceedings in the FTT, injunctive actions in the Admin Court and claims for damages in the High Court.

### **HMRC v Carbondesk**

Successfully acted for HMRC in respect of a £98 million carbon credits fraud. This was the first case of its type to come before the FTT. Carbondesk dropped its appeal after it was unsuccessful in efforts to argue that the time limits for the issuing of the assessments had expired.

### **HMRC v Megantic Services Limited**

Longest ever First-tier Tribunal case lasting for 61 days relating to the denial of over £28 million of input tax. The case involved over 2000 deal chains involving complex contra-trading transactions. The papers ran to in excess of 200,000 pages.

## Criminal Defence

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Although a fraud specialist Jonathan has defended in a number of privately funded cases since taking silk, including murder, drugs, serious sex and drugs. He brings a high level of client service, incisive cross-examination and top level trial strategy to every case he undertakes.

## Notable Cases:

Advising a partner of a big four accountancy firm in respect of a criminal investigation by the SFO.

### **SFO v P**

Acting for a company director in a prosecution brought by the SFO in respect of the theft of a pension fund.

### **R v M**

Represented a company director charged with supplying large quantities of cocaine and using his business to assist in the laundering of the proceeds.

### **R v B**

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Acting for a company director in respect of charges relating to the indecent images of children.

## **R v X**

Represented a 16 year old charged with murdering another young girl with a comb.

## Criminal Defence

Jonathan's has acted for the Financial Reporting Council (FRC) in respect of a number of its most serious cases in respect of accountancy regulation.

### Notable Cases:

- Acted for the FRC in the investigation and proceedings under its Scheme for the accountancy profession into the conduct of a Member of the ICAEW and of HWCA Limited, the former auditors of Worthington Nicholls Group Plc until 4 December 2007.
- Acted for FRC in proceedings against EY in respect of their audit of the accounts of Farepak the failed Christmas savings club. EY were fined £750,000 and ordered to pay costs of £425,000. The former audit partner AF was reprimanded and fined £50,000.
- Acting for the FRC into the investigation into the conduct of KPMG Audit plc as auditors to BAE Systems plc.
- Advising a partner of a big four accountancy firm in respect of investigations by the SFO and the FRC.

## Public Prosecution

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Jonathan is a leading prosecutor in the area of fraud and financial crime and is instructed in the largest cases brought by the SFO and the specialist groups of the CPS.

### Notable Cases:

Instructed by the DPP's Strategic Policy Advisor to provide advice on the prosecution of individuals using video conferencing facilities to view and distribute indecent images of children.

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**R V B**[2017] EWCA Crim 534; [2017] 1 W.L.R. 4071; [2017] 2 Cr. App. R. 25; [2017] Lloyd's Rep. F.C. 297; [2017] L.L.R. 607;

Instructed by the DPP to intervene in proceedings in the Court of Appeal in respect of a private prosecution brought by a local authority.

## Malicious Prosecution

Over the last five years I have represented the Crown Prosecution Service, instructed by the Government Legal Department, in all its high-profile malicious prosecution cases. This includes cases that have gone to trial, those that have settled and others in which, although the CPS were not parties, they were third parties and were heavily involved in the litigation either because employees or former employees were witnesses and/or there were significant disclosure issues. Many of the cases have also involved claims for misfeasance in a public office, conspiracy to injure by unlawful means and breaches of Article 6.

## Notable Cases:

### **Rudall v CPS [2018] 11 WLUK 553**

Acted for the CPS in a multi-million pound claim brought by a former solicitor who had been unsuccessfully prosecuted twice by the CPS for serious fraud offences over a period of over 10 years. The claims were dismissed following a 2-week trial in front of Lambert J. This is the leading case in respect of malicious prosecution claims brought against prosecuting authorities. Dealt with significant strike-out and summary judgment applications and a huge disclosure exercise.

### **Dunn and Higgins v CPS**

### **Conrad Jones v CPS**

Acted for the CPS in claims brought by two individuals whose convictions for murder were quashed on appeal, having served 11 years in custody. Settled the case on a confidential basis following protracted negotiations with the Claimants counsel.

In a satellite case Mr Jones had been convicted of perverting the course of justice and had served several years in prison, prior to his conviction being quashed. Negotiated a settlement.

### **Coghlan v CPS – [2018] EWHC 1784 (QB)**

Acted for the CPS in high value claims brought by Claimant following his acquittal for murder. Claims were struck

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out by Yip J.

### **Mouncher and others v South Wales Police – The Lynette White Case**

Although the CPS were not a party to the proceedings they were heavily involved as a third party. I was responsible for drafting witness statements, advising witnesses, devising strategies and completing a disclosure exercise for the civil trial. Thereafter I was also responsible for advising on the CPS approach and response to the independent review conducted by Richard Horwell QC.

### **Khan, Khan and Khan v CPS**

Acted for the CPS in claims brought by three defendants who had been acquitted of conspiracy to murder. The case was prepared over the course of three years, including numerous interim applications and a vast disclosure exercise. Having pushed the strength of the CPS position the Claimants dropped their claims shortly before trial.

## Accreditations

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## Appointments & Memberships

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- Recorder of the Crown Court (authorised to try serious sex cases) 2009
  - QC List for SFO Prosecution Panel & Proceeds of Crime Panel (2013 – present)
  - Special Advocate appointed by the Attorney General to deal with terrorism (Special Immigration Appeals Commission) cases and complex public interest immunity (PII) issues – 2007
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- Criminal Bar Association
  - Revenue Bar Association

## Education & Qualifications

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- Methodist College, Belfast
- Newcastle University LLB (Hons)
- Inns of Court School of Law

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