



HOUSE OF REPRESENTATIVES

House of Representatives

04 DEC 2017

To the Registrar of Members' Interests,

Citizenship Register

### Statement in relation to citizenship – 45th Parliament

I declare that at the time I nominated for election in this 45th Parliament I was an Australian citizen.

#### Section 1—Member's details

Surname	Other Names
WILSON	JOSH

Electorate	State
FREMANTLE	WA

#### Section 2—Member's birth and citizenship details

Place of birth	Citizenship held at birth
LONDON, UNITED KINGDOM	BRITISH

Date of birth	Date of Australian naturalisation <i>(if not an Australian citizen by birth)</i>
5 / 6 / 1972 Day Month Year	14 / 2 / 1973 Day Month Year

#### Notes

- (1) The information which you are required to provide is contained in a resolution agreed to by the House of Representatives on 4 December 2017.
- (2) If there is insufficient space on this form for the information you are required to provide, you may attach additional pages for that purpose. An electronic version of this form is available at <http://members.parl.net/citizenship> (internal link).
- (3) Forward the original, signed copy of all pages of this statement to the Registrar of Members' Interests, RG.39 Parliament House, Canberra ACT 2600.

**Section 3(a)—Member's parents' birth details**

	Mother	Father
Place of birth:	AUSTRALIA	AUSTRALIA
Date of birth:	22 / 4 / 1947 Day Month Year	6 / 1 / 1947 Day Month Year

**Section 3(b)—Member's grandparents' birth details**

	Maternal grandmother	Maternal grandfather
Place of birth:	UNITED KINGDOM	AUSTRALIA
Date of birth:	28 / 6 / 1912 Day Month Year	4 / 11 / 1910 Day Month Year

	Paternal grandmother	Paternal grandfather
Place of birth:	AUSTRALIA	AUSTRALIA
Date of birth:	4 / 5 / 1922 Day Month Year	30 / 1 / 1917 Day Month Year

**Section 3(c)—Member's spouse details (if applicable)**

	Spouse
Place of birth:	AUSTRALIA
Date of birth:	26 / 9 / 1970 Day Month Year

### Section 3(d)

Please list the steps you have taken to assure yourself you have not acquired citizenship of another country by descent, marriage or other means.

N/A

**Section 4(a)—Foreign citizenship**

Have you ever been a citizen of any country other than Australia?

☐ **NO** — *Proceed to Section 6*☒ **YES** — *List the countries that you have been a citizen of, and evidence of the date and manner in which your citizenship of any other country was renounced or otherwise came to an end in accordance with the laws of the relevant country.*

Country	Manner of renunciation or other manner in which the foreign citizenship came to an end	Date	Evidence attached
UK	<p>I renounced British citizenship prior to nominating for election, by completing a <i>Form RN Declaration of Renunciation of British Citizenship</i> and dispatching it to the UK Home Office together with credit card details for payment of the processing fee.</p> <p>I completed the Declaration of Renunciation on 12 May 2016 and dispatched it to the UK Home Office on 13 May 2016 by International Express Post.</p> <p>A copy of my Declaration of Renunciation is provided at <b>Attachment A</b>. A copy of the International Express Post receipt is provided at <b>Attachment B</b>.</p> <p>Australia Post confirmed that my Declaration of Renunciation was delivered to the UK Home Office on 16 May 2016. A copy of the delivery confirmation is provided at <b>Attachment C</b>.</p> <p>The UK Home Office charged my credit card for payment of the processing fee on 6 June 2016. An excerpt of my internet banking transaction history confirming this transaction is provided at <b>Attachment D</b>.</p> <p>A copy of the registered renunciation is provided at <b>Attachment E</b>.</p>	13 May 2016	Yes

**NB:** Evidence of the date and manner in which your citizenship was renounced or otherwise came to an end **should** be attached to this form. Please date and initial each page of any attachment.



**Section 4(b)—Foreign citizenship at time of nomination**

On the date you nominated for election in this 45th Parliament were you a citizen of any country other than Australia?

☐ NO

☒ YES — *Provide details and evidence of any steps you have taken to renounce the citizenship of the other country prior to the date of nomination.*

Country	Action	Date	Evidence attached
UK	See answer to 4(a).	13 May 2016	Yes

**NB:** Evidence of the steps taken to renounce the citizenship of the other country prior to the date of nomination **should** be attached to this form. Please date and initial each page of any attachment.

**Section 4(c) —Foreign citizenship now**

Are you now a citizen of any country other than Australia?

☒ NO

☐ YES — *Provide details and evidence of any steps taken to renounce the citizenship of the other country.*

Country	Action	Date	Evidence attached

**NB:** Evidence of the steps taken to renounce the citizenship of the other country **should** be attached to this form. Please date and initial each page of any attachment.

## Section 5—Member with foreign citizenship at nomination or now

Complete this section if you answered YES in section 4(b) or 4(c)

Basis on which you contend you are not disqualified under s 44(i) of the Constitution	Evidence attached
<p>I took all necessary - and, indeed, all possible - steps to renounce British citizenship, in accordance with the requirements of British law, prior to nominating for election to the House of Representatives. I had therefore absolved myself of any impediment under section 44(i) of the Australian Constitution, in accordance with the "reasonable steps" test articulated by the High Court of Australia in the leading judgment of <i>Sykes v Cleary</i> and affirmed in the subsequent judgments of <i>Sue v Hill</i>, <i>Re Roberts</i> and <i>Re Canavan &amp; Ors</i>.</p> <p><b>Requirements for renunciation under British law</b></p> <p>On 12 May 2016 I completed a <i>Form RN Declaration of Renunciation of British Citizenship</i>. I dispatched it to the UK Home Office on 13 May 2016 by International Express Post, together with credit card details for payment of the processing fee and relevant supporting documents.</p> <p>According to advice obtained from Mr Adrian Berry of the English Bar, upon dispatching the Form RN on 13 May 2016 I had taken all steps necessary to renounce British citizenship, according to the requirements of British law.</p> <p>Mr Adrian Berry is a leading expert on British Nationality Law. A copy of his professional profile is attached at <b>Attachment F</b>.</p> <p>A copy of Mr Berry's written advice of 1 December 2017 is provided at <b>Attachment G</b>. Mr Berry concludes:</p> <p><i>16. In my opinion on the date that he sent his Declaration of Renunciation Form RN to the Home Office, that is on 13 May 2016, Josh had sent all the necessary information required by Section 12 of the British Nationality Act 1981 and Regulations 8 and 9 and Schedule 5 of the British Nationality (General) Regulations 2013.</i></p> <p><i>17. He had taken all the necessary steps to renounce his British citizenship and had supplied all the necessary information, sent the necessary payment details, and had made the appropriate declaration on Form RN.</i></p> <p><b>Reasonable steps test</b></p> <p>As I took all necessary – and, indeed, all possible - steps to renounce British citizenship in accordance with the requirements of British law, prior to nomination, I had therefore absolved myself of any impediment under section 44(i) of the Australian Constitution, as set out in the Australian Electoral Commission's (AEC) <i>Candidate Handbook</i> and the AEC's <i>Electoral Backgrounder: Constitutional Disqualifications and Intending Candidates</i>.</p> <p>I enclose advice obtained from Ms Simona Gory and Mr Ray Finkelstein QC, retired Justice of the Federal Court of Australia (<b>Attachment H</b>) who advise that (at paragraph 11 of their advice), as I had completed a Declaration of Renunciation and dispatched it to the Home Office together with credit card details for payment of the processing fee prior to nomination, I had:</p> <p><i>...taken not only all reasonable steps to renounce [my] British citizenship, [I] had taken all steps that were required under the relevant British laws.</i></p> <p>Accordingly, Ms Gory and Mr Finkelstein QC conclude that I was validly elected as the Member for Fremantle and am qualified to sit as a Member of the House of Representatives.</p>	Yes
NB: Please date and initial each page of any attachment.	

## Section 6—General declaration

I declare that I have completed this statement to the best of my knowledge and have attached all evidence relevant to my declarations.

Signed	Date:
	<div style="text-align: center;"> <span style="font-size: 1.2em;">4</span>    /    <span style="font-size: 1.2em;">12</span>    /    <span style="font-size: 1.2em;">2017</span>  <div style="display: flex; justify-content: space-around; font-size: 0.8em;"> <span>Day</span> <span>Month</span> <span>Year</span> </div> </div>

Official Copy

## Page 1 of 6



☐ British overseas territories citizen

☐ British national (overseas)

☐ British subject

I wish to renounce: (please tick)

☒ British citizenship

☐ British overseas citizenship

☐ British overseas territories citizen

☐ British national (overseas) status

☐ British subject status

See section 1 of the Guide and enclose evidence of your citizenship(s) or status – see section 3

You must complete either section 3 or section 4. If both apply, please complete both. You should send evidence of any other citizenship held or about to be acquired.

3. I hold the following citizenship or nationality other than the citizenship or status I wish to renounce:

AUSTRALIAN CITIZENSHIP (SEE COPY OF PASSPORT + DECLARATION OF CITIZENSHIP ENCLOSED)

4. I am about to acquire the following citizenship or nationality after making this declaration:

N/A

5. If you are under 18 please state your date of marriage or civil partnership:

--	--	--	--	--	--	--	--	--	--

6. Declaration

Warning: To give false information on this form knowingly or recklessly is a criminal offence punishable with up to 3 months' imprisonment or a fine not exceeding £5000 or both (Section 46(1) of the British Nationality Act 1981 as amended).

I, (full name in BLOCK LETTERS) JOSHUA HAMILTON WILSON  
declare that to the best of my knowledge and belief the details given on this form are true.

Signature



Date

12 MAY 2016

7. Declaration by countersignatory

Name:

Address:

Daytime telephone number:

Either:

☒

I confirm that I am aged 18 or over, that I know the person who is making this declaration of renunciation, and that he/she is of full capacity. I am willing to give full details of my knowledge of this person. (See sections 1 and 3 in the guide.)

Or:

☐

I confirm that the person who is making this declaration is not of full capacity, but that renunciation would be in his or her best interests for the following reasons. I enclose documentation to show that he or she is in my care.

I understand that I may be liable for prosecution resulting in a penalty of up to 3 months imprisonment or a fine not exceeding £5,000 or both if I knowingly or recklessly make a false declaration.

Signature

Date

12 May 2016

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## Home Office

Form RN

June 2015

**Applicant's Copy**

Declaration of Renunciation of British Citizenship, British Overseas  
Citizenship, British Overseas Territories Citizenship, British National  
(Overseas) or British Subject Status

**This declaration, if signed and stamped below, is formal evidence of renunciation.**

1. I (full name)

[illegible]

of (full address)

was born on (date of birth)

0	5	0	6	1	9	7	2
---	---	---	---	---	---	---	---

at (place and country of birth)

LONDON, ENGLAND

2. I am a: (please tick)

- ☒ British citizen
- ☐ British overseas citizen
- ☐ British overseas territories citizen
- ☐ British national (overseas)
- ☐ British subject

I wish to renounce: (please tick)

- ☒ British citizenship
- ☐ British overseas territories citizen
- ☐ British subject status
- ☐ British overseas citizenship
- ☐ British national (overseas) status



3. I hold the following citizenship or nationality other than the citizenship or status I wish to renounce:

AUSTRALIAN CITIZENSHIP

4. I am about to acquire the following citizenship or nationality after making this declaration:

N/A

5. I, (full name in BLOCK LETTERS) JOSHUA HAMILTON WILSON  
declare that to the best of my knowledge and belief the details given on this form are true.

Signature



Date

12 MAY 2016

Official confirmation of renunciation:

Signature



Home Office

HOFFMANS

- BARRISTERS & SOLICITORS -  
252 ADELAIDE TERRACE  
PERTH, WESTERN AUSTRALIA 6000  
PH (09) 221 2211 FAX (09) 221 2696



COMMONWEALTH OF AUSTRALIA

*Australian Citizenship Act*

# *Evidence of Australian Citizenship*

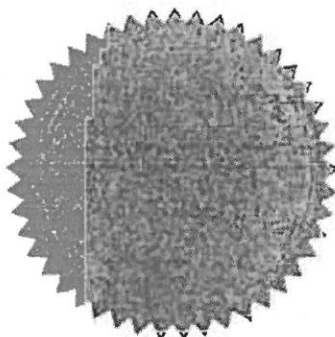
JOSHUA HAMILTON WILSON

*born on 5th June 1972*

*I, the Minister of State for Immigration, Local Government and  
Ethnic Affairs hereby declare that the abovenamed is an Australian citizen and that  
citizenship was acquired on 14th February 1973.*

*Dated 22nd September 1992*

No. Z07326759T



*Michael Sali*

ACTING  
MINISTER OF STATE FOR  
IMMIGRATION, LOCAL GOVERNMENT  
AND ETHNIC AFFAIRS

OBSERVATIONS



Subject is the only person who has been registered in the  
document and who has been given a passport. The  
subject is the only person who has been given a passport.  
The subject is the only person who has been given a passport.

PASSPORT

AUSTRALIA

Type / Type

P

Code of issuing / Code de l'émission

AUS

Name / Nom

WILSON

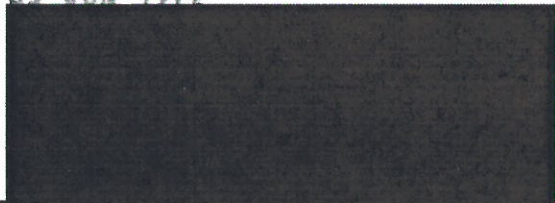
JOSHUA HAMILTON

Nationality / Nationalité

AUSTRALIAN

Date of birth / Date de naissance

05 JUN 1972



# PAYMENT SLIP CREDIT/SWITCH

Applicant Name:	JOSHUA HAMILTON WILSON	HO Ref:
Date of Birth:	5 JUNE 1972	
Town & Country of Birth:	LONDON, ENGLAND	

Please tick ☒ as appropriate:

- ☒ Please debit my [REDACTED] d (delete as appropriate): for the sum of £...7.1.....



Card Number

[REDACTED]



Expiry date:

[REDACTED]

Valid From:

[REDACTED]



Cardholder Name:

JOSHUA H WILSON

Cardholder Address:

[REDACTED]



Card Security Code:

[REDACTED]

(Please enter the last 3 or 4 digits on the signature strip on the reverse of your card)



- ☐ I attach a cheque crossed a/c payee, Number ..... for the sum of £..... made payable to: The Accounting Officer, Home Office.



## FEE REFUND

If someone else is paying your fee through their bank account please provide the name and address of the account holder in case a fee refund becomes due.

Applicants Name:			HO Ref:
Account Holder Name:			
Account Holder Address:			
	Post Code:		





# Home Office

## **FEES WITH EFFECT FROM 18 MARCH 2016 FOR CITIZENSHIP APPLICATIONS AND THE RIGHT OF ABODE**

**Including reconsiderations, status checks, duplicate certificates, confirmation of the non-acquisition of British citizenship and certificate corrections**

Fees must be paid in full at the same time as you send your application(s) to the Home Office. The only exception to this applies to requests for a certificate correction. The fee for a certificate correction will be requested once the caseworker has decided what correction is appropriate.

Please ensure that you have sufficient funds to cover the fee payment. Certificates of citizenship cannot be issued until fees have been received.

If the full fee or biometric data is not provided, then the application will be rejected as invalid. The application will not be considered and the fee will be refunded less an administration fee of £25.

You may pay by cheque or credit/debit card. Please send your payment with the payment slip attached to this leaflet. You are advised not to send cash, transcash or postal orders.

Fees are prescribed in law and only part may be refundable if applications are unsuccessful or withdrawn, except for declarations of renunciation (see table overleaf). You should read very carefully the guides that accompany application forms, to ensure that you meet the statutory requirements, before applying. If you are paying using a bank or credit account which belongs to someone else, you should give their details on the payment slip in case any refund becomes due.

The fees shown overleaf are for applications submitted to the Secretary of State at the Home Office. Applications submitted to a different receiving authority must be sent, or handed in to that authority. The appropriate receiving authorities are:

- i. the Home Secretary if, on the date of receipt, the applicant is in Great Britain or Northern Ireland;
- ii. the Lieutenant-Governor if, on the date of receipt, the applicant is in any of the Islands (i.e. the Channel Islands or the Isle of Man);
- iii. the appropriate Governor if, on the date of receipt, the applicant is in a British overseas territory;
- iv. the Home Secretary if, on the date of receipt, the applicant is elsewhere (including in a Commonwealth country).

Applications for registration or naturalisation as a British overseas territories citizen normally have to be referred to the Governor of the British overseas territory with which the applicant is connected, for his decision. Where this is necessary, applicants will be notified about the fee payable after they have sent in their applications.

The overall fee for British citizenship comprises two elements. They are:

- a) Fee for handling and processing the application. None of this is refundable if the application is refused or withdrawn.
- b) Citizenship ceremony fee. This is paid by applicants who are required to attend a citizenship ceremony. It is refunded to applicants whose applications are refused or withdrawn.

The total amount, including the ceremony, fee is shown in the chart overleaf. Payments should be made using the payment slip attached to this leaflet.

This leaflet has no legal authority as an interpretation of the British Nationality Act 1981 or the current Fees Regulations. It is intended merely as a guide.

FEE TYPE	APPLICATION FORM	TYPE OF APPLICATION	TOTAL FEE PAYABLE
<b>ADULTS APPLYING FOR BRITISH CITIZENSHIP</b>			
AN		Naturalisation	£1236
B(OS) B(OTA) RS1 S1 S2 S3 T EM		Registration	£1121
UKM, UKF		Section 4C, 4G, 4H, 4I registration (ceremony fee only)	£80
<b>APPLICATIONS FOR OTHER TYPES OF BRITISH NATIONALITY</b>			
AN(modified)		Adults applying to naturalise as British overseas territories citizens	£925
RS2 S1 S2 S3 P1		Adults applying to register as British overseas territories citizens, British Overseas citizens, British protected person or British subjects	£833
		It is possible to be registered or naturalised as a British overseas territories citizen in the UK only in exceptional circumstances.	
<b>CHILDREN</b>			
B(OTA) B(OS) EM MN1 S2 S3 T		Child under 18 applying to register as a British citizen	£936
		**An additional £80 per applicant is required to cover the ceremony fee should the child turn 18 during the application process. This will be required at point of decision.	
MN3 MN4 S2		Child under 18 applying to register as British overseas territories citizens, British Overseas citizens or British subjects	£749
<b>RENUNCIATION OF BRITISH NATIONALITY</b>			
RN		Application to renounce British citizenship, British Overseas citizenship, British overseas territories citizenship, British subject, British protected person status or British National (Overseas).	£272
		Applicants who are living in the UK and want to renounce British Overseas Territories Citizenship and another British citizenship.	£544

**RIGHT OF ABODE**

ROA	Application for a certificate of entitlement to the right of abode in the UK	£272
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**OTHER**

	Duplicate certificate	£198
--	-----------------------	------

NS	Confirmation of status as a British citizen	£198
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NQ	Confirmation of non-acquisition of British citizenship	£198
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NR	Reconsideration of an application for naturalisation or registration	£272
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RROA	Reconsideration of an application for a certificate of entitlement to the right of abode	£272
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	Correction to Nationality certificate	£198
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**INVALID APPLICATIONS**

		£25
--	--	-----

If the full fee or biometric data is not provided then the application will be rejected as invalid. The application will not be considered and the fee will be refunded less an administration fee of £25.



ATTACH B

A U S T R A L I A   P O S T  
Fremantle Post Office   6160

Express   \$  
UNITED KINGDOM - Zone 6   46.20  
0 - 500 grams (Scale)  
Track Advice Email (Free)  
Article ID:  
EJ200814734AU  
Notification:  
JOSHUA.WILSON@APH.GOV.AU

Please retain as proof of lodgement.  
For track event information go to  
[www.auspost.com.au/track](http://www.auspost.com.au/track)

Extra Cover Not Purchased  
**TOTAL**   **\$46.20**  
Payment Tendered Details :  
EFTPOS   46.20  
\* POST supplied, price includes GST.  
GST on POST Taxable Supply :   0.00

ABN:28 864 970 579   TAX INVOICE

EFTPOS  
560251#####4378 (S)   SAVINGS ACCOUNT  
EFTPOS Tender   46.20  
TOTAL EFTPOS   46.20  
APPROVED 00  
Proprietary Debit  
RRN 024138120411  
13/05/16 12:04:11 634775 02/024138 2SY

**Provide feedback on today's  
visit for your chance to win  
\$1,000 worth of gift cards\***

Phone 1800 443 930 ^  
or go online to  
[auspost.com.au/myvisit](http://auspost.com.au/myvisit)

The survey takes 4 minutes to complete

**Outlet ID: 6347751**  
**Receipt number: 02416766**

\* Promotional period 00:01am 09 May  
to 11:59pm 22 May 2016. Terms and  
conditions apply and are available at  
[auspost.com.au/myvisit](http://auspost.com.au/myvisit)

^ Call charges may apply from a  
mobile phone

13/05/16 02/41676 2SY/2   634775   12:04

POST BILLPAY  
ASK WHICH BILLS YOU CAN PAY



[REDACTED]  
FYI

josh

**From:** AusPost Tracking noreply [mailto:noreply@messaging.auspost.com.au]  
**Sent:** Monday, 16 May 2016 5:05 PM  
**To:** Wilson, Joshua [REDACTED]  
**Subject:** Your item has been delivered



Tracking update

Good news, your item  
has been delivered

Arrived at destination in **United Kingdom**

**Delivered**

EJ200814734AU

Sent with **International Post Express**



A business of Australia Post

This email was sent by [Australia Post](#), 111 Bourke Street, MELBOURNE VIC 3000. Australia Post will never ask for your password or send you an email asking for credit card details or account information. If you have any concerns, or don't think you should have received this email, please call us on 13 13 18. Visit [auspost.com.au](#) for further information on our online [security](#).

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ATTACH D



## NAB Internet Banking

## Transaction history

Account: [REDACTED]

Date from: 06/06/16

Date to: 06/06/16

Search details:

Transaction type: All transactions

Reference from:

Reference to:

Amount from:

Amount to:

date	transaction details	debit	credit	balance
06 Jun 16	NATIONALITY DIRECTORAT CREDIT CARD PURCHASE Ref. #0004557016840101666	543.13 DR		855.11 DR
06 Jun 16	NAB INTNL TRAN FEE - (MC) FEES	16.29 DR		311.98 DR

End of Report

Date 13/11/17 Time 16:09

National Australia Bank Limited A.B.N. 12 004 044 937



Home Office

The Capital Building

Liverpool

L3 9PP

**Tel** 0300 123 2241

**Fax**

**Email**

**Web** [www.gov.uk/uk-visas-immigration](http://www.gov.uk/uk-visas-immigration)

Mr J. H. Wilson



Our Ref W1996907

Your Ref

Date 24 June 2016

Dear Mr Wilson

**Renunciation of British Citizenship**

I am writing to inform you that the above named is now registered as having renounced British Citizenship.

Enclosed is the Declaration of renunciation bearing a stamp of registration. This confirms the date on which the applicant ceased to be a British Citizen, under Section 12(1) of the British Nationality Act 1981.

Any British travel documents that you may still hold should be returned to:

Her Majesty's Passport Office  
Globe House  
89 Eccleston Square  
London, SW1V 1PN

Renunciation of British nationality affects a person's right to live in the UK. If you live in the UK, you should contact us as soon as possible for information on how you are affected by your renunciation of British nationality and what steps you must take to confirm your immigration status. Details of how to contact us can be found on our website at [www.gov.uk/uk-visas-immigration](http://www.gov.uk/uk-visas-immigration)

Yours sincerely,

R Nokes  
CT5

Encl: Copy of Australian citizen certificate and BC passport





Applicant's Copy

3261437

Declaration of Renunciation of British Citizenship, British Overseas  
Citizenship, British Overseas Territories Citizenship, British National  
(Overseas) or British Subject Status

This declaration, if signed and stamped below, is formal evidence of renunciation.

1. I (full name)

[illegible]

of (full address)



was born on (date of birth)

0	5		0	6		1	9	7	2
---	---	--	---	---	--	---	---	---	---

at (place and country of birth)

LONDON, ENGLAND

2. I am a: (please tick)

- ☒ British citizen
- ☐ British overseas citizen
- ☐ British overseas territories citizen
- ☐ British national (overseas)
- ☐ British subject

I wish to renounce: (please tick)

- ☒ British citizenship
- ☐ British overseas citizenship
- ☐ British overseas territories citizen
- ☐ British national (overseas) status
- ☐ British subject status

3. I hold the following citizenship or nationality other than the citizenship or status I wish to renounce:

AUSTRALIAN CITIZENSHIP

4. I am about to acquire the following citizenship or nationality after making this declaration:

N/A

5. I, (full name in BLOCK LETTERS) JOSHUA HAMILTON WILSON  
declare that to the best of my knowledge and belief the details given on this form are true.

Signature




Date

12 MAY 2016

Official confirmation of renunciation:

Signature



Home Office

HOME OFFICE

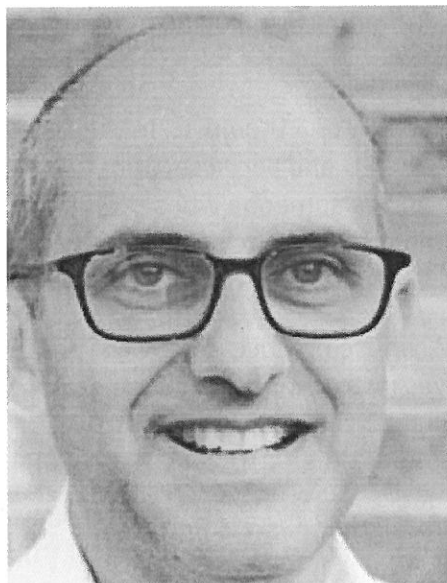
29 JUN 2016

REGISTERED



## ADRIAN BERRY

Call: 1998



***"One of the finest legal minds of our time."***

***"Analytical, and extremely clever at complex law; the best of any barrister at EU and nationality law."***

The Legal 500 and Chambers UK Bar Guide

## Practice

Adrian's core public law practice spans a range of inter-related areas concerning citizenship, migration, human rights, international protection, and social assistance:

1. British Nationality, Conflict of Nationality Laws, and Statelessness
2. Investor, Entrepreneur, High Value, and Economic Migration (inc Work Permits)
3. EU Citizenship and Free Movement of Persons
4. Human Rights and Family Reunion
5. International Protection, Refugee Law and Asylum, and Extradition
6. Settlement, Permanent Residence, and Citizenship, for High Value Migrants
7. Student Migration
8. General UK Immigration Law
9. Homelessness, Housing, and Migrant Welfare
10. Community Care and Welfare Benefits

He acts and advises across the field of public law. He provides advice and advocacy services. He accepts instructions via a solicitor or other licenced professional client. In addition, he is acts for clients directly under the Bar Public Access scheme.

Adrian acts for individuals, communities and, where appropriate, NGOs and international organisations. He accepts instructions to assist persons with applications, reviews and legal remedies in courts and tribunals. He



also acts as a consultant to NGOs and international organisations, to assist with strategic litigation, analyses and reports of immigration and nationality law and practice, and actions plans for reform.

Adrian practises in the Administrative Court, the Immigration Tribunals, the Administrative Appeals Chamber of the Upper Tribunal, Appeal Courts, County Courts, and the Special Immigration Appeals Commission (SIAC). He has acted in cases before the Court of Justice of the European Union (CJEU) and with petitions to the European Court of Human Rights. A list of some of his notable cases is set out below.

He writes a blog on migration, citizenship and free movement called [Cosmopolis](#). He also has a website on [Nationality and Citizenship law](#). As an immigration barrister he is well known, not just for his casework, but also for his policy work and contribution to debates on immigration and nationality law.

## What others say

Adrian is ranked in both legal directories for immigration. He is ranked in Tier 1 in the Legal 500 2016 and Band 1 in Chambers UK 2017.

In Chambers UK he has been described as having “real flair” and as being “excellent on EU points.” In the Legal 500 he has been described as ‘an “EU whiz-kid” who manages to “unscramble the EU and social security minefield with ease”, as having ‘an extensive British nationality law practice’, and as someone whose “commitment to ensuring that EU law can be used to benefit people who would otherwise be destitute is unwavering.”

In **Chambers UK 2017**, Adrian is described as “An exceptionally skilled junior, whose practice is heavily focused on British nationality and EU free movement law. He routinely receives instructions from large-scale corporations in major commercial immigration matters.” “An absolutely brilliant brain and a delightful personality – always a pleasure to work with.” “One of the finest legal minds of our time.”

In the **Legal 500 2016**, it is written that “His knowledge of the EU aspects of immigration law is unrivalled.”

In **Chambers UK 2016**, it is written that “He remains one of the few true experts on nationality law.” “He knows EEA law inside out. He is a seasoned High Court advocate and is so well connected in the world of immigration law, domestically and throughout Europe.”

In **Legal 500 2015**, Adrian is described as “Analytical, and extremely clever at complex law; the best of any barrister at EU and nationality law.” Regarding his social housing practice, “His depth of knowledge is excellent.”

In **Chambers UK 2015**, it is written that Adrian “has an excellent reputation for his work on British nationality, international protection and asylum matters. He is often called upon to advise the UNHCR on statelessness, and he provides businesses, schools and individuals with information on Tier 1 and Tier 4 applications. He is described as “incredibly knowledgeable across all areas of UK immigration law and always willing to take the time to have something run by him.” “Very impressive on nationality issues and statelessness, and a very good advocate and communicator.”

In **Chambers UK 2014**, Adrian is described as a “guru on European immigration issues,” and as “thorough and highly knowledgeable.” “In EU law he really is the person.” Regarding his practice in social housing, he is described as “bright and articulate,” Adrian Berry has extensive knowledge of the eligibility of EU nationals to housing rights. “He’s really stepped up as a leading junior on EU-related housing cases.” “He’s consistently turning out quality Court of Appeal and European work.” Sources praise him for his ability to convey complex arguments in a concise, clear and persuasive manner.”

In **Legal 500 2014**, Adrian is highlighted in Social Housing where it is said that “his knowledge of European Law is exceptional and his drafting is precise and clear.” He is also highlighted in Immigration where it is noted that “judges listen to him.”

## British Nationality law, Nationality law codes, and Statelessness



Adrian has an extensive practice in British nationality law, both (1) in historic Commonwealth-based claims and (2) in contemporary issues concerning the automatic acquisition of citizenship, naturalisation and registration, as well as deprivation and loss of British nationality. He advises on claims to be a British citizen, British Overseas citizen (BOC), British overseas territories citizen (BOTC), British National (Overseas) (BN(O)), British protected person (BPP) or British subject.

He also regularly advises on the conflict of nationality laws for people with multiple nationalities, who hold or seek to hold both British nationality and other foreign nationalities, where the other countries are intolerant of multiple nationalities. In these cases he acts in partnership with foreign lawyers to resolve the conflict of laws between nationality law codes, as well as issues concerning domicile and tax. He also advises on the use of passports as markers of nationality.

As regards statelessness issues, he acts and advises in relation to statelessness cases, including in relation to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. He works on cases concerning stateless persons in detention, the regularization of stateless persons, and the welfare of stateless persons. He has worked with Asylum Aid and the Equal Rights Trust on statelessness issues and – as a member of the UNHCR London panel of counsel – he advises UNHCR on statelessness issues. He is a member of the Advisory Council of the European Network on Statelessness (ENS).

He has contributed to all chapters and parts of *Fransman's British Nationality Law* (3rd edition 2011), contributed the nationality law chapters to the *JCWI Handbook* 2006, contributed to *Jackson and Warr's Immigration Law and Practice* (2008) on the Right of Abode, contributed the nationality law chapters to the *Blackstone's Guide to the Borders, Citizenship and Immigration Act 2009* (OUP 2010), advised JCWI on government nationality proposals, and contributed to responses to government consultation papers and advised peers in the House of Lords for ILPA.

He has written on the relationship between British nationality and EU citizenship in *Deprivation of Nationality and Citizenship – The Role of EU Law* Journal of Immigration Asylum and Nationality Law Volume 28 Number 4 2015 pp. 355-366. In addition, he has provided advice in *Chagos Islanders v UK* (ECtHR) on the position of the Chagos Islanders in British nationality law.

He provides training on British nationality law and has taught nationality law as part of international public law to LLM students. He was a member of the group of nationality law experts reviewing the draft Protocol to the African Charter on Human and Peoples' Rights on the right to Nationality and the Prevention and Prohibition of Statelessness in Africa. He was a member of the Home Office Earned Citizenship Strategic Advisory Group.

### **Investor, Entrepreneur, High Value and Economic Migration (inc Work Permits)**

Adrian acts for individuals, commercial undertakings, and institutions in relation to matters arising for economic migrants under the Points-Based System (Tiers 1, 2 and 5) and other routes. Among other things, he provides advice to individuals, sponsors, and banks and financial entities, in relation to the Tier 1 (Investor) route, the Tier 1 (Entrepreneur) route, Tier 2 work permits and Tier 2 Intra-Company Transfers (ICTs), and to individual and sponsors under other routes.

He regularly advises on the issues that arise for migrants and for employers in relation to unlawful employment and civil penalties (including county court appeals), including scenarios where the employer holds a sponsor licence. He also works with employment lawyers to advise on the cross-over between immigration sponsorship, breaches of immigration law, employment rights law, and dismissal law, in relation to migrants. He writes on economic migration issues. In addition, he provides strategic advice to professional associations, commercial entities and community interest groups on the use of the economic migration routes and the opportunities for lobbying the UK Home Office on areas of concern.

### **EU Citizenship and Free Movement**

Adrian has an extensive practice in relation to both EU citizenship and the free movement of persons under EU law. He has appeared in numerous cases before the Court of Justice of the European Union (CJEU) (including



*Chen, Teixeira and Dias*) and in numerous reported cases in domestic UK courts. He has a particular interest in EU law as it applies to EU citizens and third country nationals in immigration and social welfare cases.

As regards immigration law, he advises on free movement of persons under Directive 2004/38/EC, deportation, rights of residence derived from other EU law provisions, Posted Workers rights, and the use of the Charter of Fundamental Rights to protect family members of EU migrants.

As regards social welfare cases, he also advises on entitlement to social assistance under EU law, the co-ordination of social security (Regulation 883/2004), and the right to equal treatment in social policy and education matters.

As regards EU citizenship, he advises on rights derived from EU citizenship (*Zambrano* related rights) and associated social welfare rights, see for example his case of *Pryce v Southwark* in the Court of Appeal.

He has provided advice and assistance on EU law issues to the AIRE Centre, FEANTSA, and ILPA, among others. He has written extensively about the welfare of EU migrants, see *Macdonald's Immigration Law and Practice*; *Housing Law Handbook* (Law Society 2009); *Support for Asylum Seekers and other Migrants* (Legal Action Group, 2009); and *Social Rights under Directive 2004/38/EC* *Journal of Immigration Asylum and Nationality Law* Volume 21 Number 3 2007 pp. 233-244.

## Human Rights and Family Reunion

Adrian advises and acts across the range of human rights issues that affect his clients, deploying human rights arising under the ECHR, the EU Charter of Fundamental Rights, the Common Law and other human rights catalogues, as appropriate. In immigration proceedings he acts for clients with family reunion issues and those who seek to rely on the European Convention on Human Rights. He has a particular interest in the intersection between immigration proceedings and family proceedings, and the procedural protection afforded by article 8 ECHR, see for example ***Mohan v Secretary of State*** [2012] EWCv Civ 1363, Court of Appeal. He advises on human rights and fundamental rights to European NGOs working variously on nationality, statelessness and homelessness issues.

## International Protection, Refugee Law and Asylum, Extradition

Adrian acts for a small number of clients with complex and sensitive asylum and international protection claims. Many of his clients have extensive political and economic interests in the country from which they have fled, have a high profile and are also liable to extradition. He works in partnership with extradition lawyers, immigration solicitors, country experts and commercial advisors to provide a comprehensive service. He provides advice and representation in matters arising under the 1951 Refugee Convention, the Refugee Qualification Directive (2004/83/EC) and the European Convention on Human Rights. He also acts in European Arrest Warrant (EAW) and Extradition cases and appeals. He also acts for a small number of clients with general asylum claims, including clients with multiple nationalities, statelessness issues, difficult issues in relation to a nexus to a Refugee Convention reason, and those subject to removal under the Dublin Regulation. He writes on Refugee law issues. He is a contributor to *Asylum Law and Practice* (Bloomsbury Professional, 2010).

## Settlement, Permanent Residence and Citizenship for High Value Migrants

Adrian provides strategic advice on settlement and citizenship options for persons looking to secure settlement, permanent residence and citizenship in the UK and elsewhere. He works in partnership with lawyers in other jurisdictions and with tax and financial advisors to ensure that clients are able to undertake the strategic planning necessary to optimise their position.

## Student Migration

As regards students and matters arising under Tier 4, Adrian advises and acts for individuals migrating to the UK. He also for schools, and colleges in relation to sponsor licences (issue, suspension and revocation

matters). In addition, he provides strategic advice to professional associations, commercial entities and community interest groups on the use of the student migration routes and the opportunities for lobbying the UK Home Office on areas of concern.

## General Immigration Law

Adrian acts and advises clients with issues arising under general immigration law. In addition to the work described above, he advises and acts for clients seeking to enter and remain in the UK under the Immigration Rules and on the options outside of the Immigration Rules. He also acts for clients who are unlawfully detained, those facing deportation as 'foreign criminals' or facing removal proceedings, and those who cases require a detailed knowledge of the structure of immigration control under the Immigration Act 1971. He has also advised and represented OISC advisors in disciplinary matters before the First-tier Tribunal (Immigration Services). He is a contributor to *Macdonald's Immigration Law and Practice*.

He advises and acts for landlords subject to Home Office civil penalties under the 'right to rent' provisions of the 2014 Immigration Act.

## Homelessness, Housing and Migrant Welfare

Adrian regularly acts and advises in all areas of homelessness and allocations law concerning matters that are amenable to judicial review and in statutory homelessness appeals in the county court. In particular, he specialises in eligibility issues for migrants, appearing in numerous, reported cases. He has also provided HLPAs with training and workshops on eligibility issues.

Adrian's expertise in social housing is in securing accommodation and housing for migrants. He provides a distinct service to solicitors with migrant clients based on being a one-stop shop on account of his fluency in housing, immigration, nationality, EU, ECHR and social security law. Where possible he solves problems in one of these areas by finding solutions in another.

In 2010 he was counsel in the first housing case (one of two linked cases) to reach the Court of Justice of the European Union from a British court, see **Teixeira v London Borough of Lambeth** [2010] EUECJ C-480/08. In addition he has a string of reported cases demonstrating his expertise in helping migrants secure: homelessness assistance, asylum support accommodation, accommodation for children leaving care, and housing benefit. He is responsible for many of the homelessness 'eligibility' cases decided in the Court of Appeal in recent years.

Adrian has developed a deep interest in migrant welfare, housing and support matters under different statutory regimes. His clients often have issues that touch on the Housing Act 1996, Community Care provisions, the Children Act 1989, and asylum support matters. He has particular expertise in asylum support, has a detailed knowledge of the asylum support system and has written extensively on support for asylum seekers.

He is widely published on social housing for migrants having contributed to the chapter in *Macdonald's Immigration Law and Practice* on 'Asylum Support, Housing and Community Care'; contributed the chapter in *Asylum Law and Practice* (Bloomsbury Professional, 2010), on the accommodation, housing and support of migrants 'Treatment of Asylum Seekers'; and contributed the chapter in the *Housing Law Handbook* (Law Society, 2009), on 'Housing outside the Parts 6 and 7 of the Housing Act 1996'. He also wrote the chapter in *Support for Asylum Seekers and other Migrants* (Legal Action Group, 2009) on benefits, including housing benefit.

He has a particular specialism in EU law as it applies to EU citizens and third country nationals in social housing, welfare and immigration cases, appearing in numerous reported cases. He is the author of 'Social Rights under Directive 2004/38/EC' *Journal of Immigration Asylum and Nationality Law* Volume 21 Number 3 2007 pp. 233-244

## Community Care and Welfare Benefits



Adrian acts and advises clients in the First-tier and Upper Tribunal in social security and pensions cases, including but not limited to cases that touch on immigration issues, EU law issues, pensions and points of statutory construction. He has also acted in such cases, many reported, before the Administrative Court, the Court of Appeal and by way of reference before the European Court of Justice. He contributed the chapter on benefits to *Support for Asylum Seekers and other Migrants* (Legal Action Group, 2009). He has a particular expertise in the co-ordination of social security for migrants under EU Regulation 883/2004. In community care matters, he acts and advises clients, and migrants, in particular on access to social assistance and entitlement under EU law.

### Training and Teaching

Adrian provides training courses in British nationality law, EU law, immigration law, community care law, migrant welfare law, housing law, social security law and immigration law. He has provided accredited training for the Academy of European Law, Garden Court Chambers, ILPA, HLP, JCWI, Legal Action, law centres, and local authorities. Private training on tailored topics can be provided on request. He has taught International Migration Law to LLM students.

## Publications

### Books

- *Macdonald's Immigration Law and Practice* (2015) contributor
- *Fransman's British Nationality Law* (3rd edition, 2011) contributor to all chapters.
- *Asylum Law and Practice* (Bloomsbury Professional, 2010), contributed the chapter on 'Treatment of Asylum Seekers'
- *Blackstone's Guide to the Borders, Citizenship and Immigration Act 2009* (OUP, 2010) co-author (wrote the chapters on British nationality)
- *Housing Law Handbook* (Law Society, 2009), co-author, contributed the chapter on 'Housing outside the Parts 6 and 7 of the Housing Act 1996'
- *Support for Asylum Seekers and other Migrants* (Legal Action Group, 2009), contributed the chapter on benefits.
- *Blackstone's Guide to the Criminal Justice and Immigration Act 2008* (2009) (contributed the chapter on 'Foreign Criminals'/Special Immigration Status)
- *Jackson and Warr's Immigration Law and Practice* (4th Edition, 2008) (contributor, 'The right of abode'/British nationality)
- *JCWI Immigration, Nationality and Refugee Law Handbook 2006* (contributor, British nationality chapters)
- *Dealing with your Dismissal* (Hodder Headline 2000), author (concerning dismissal and redundancy law)

### Articles

- *Deprivation of Nationality and Citizenship – The Role of EU Law* *Journal of Immigration Asylum and Nationality Law* Volume 28 Number 4 2015 pp. 355-366
- *The Right to Marry and Immigration Control: The Compatibility of Home Office policy with Article 12 and Article 14 ECHR in Baiji* *Journal of Immigration Asylum and Nationality Law* Volume 23 Number 1 2009 pp. 41-50
- *Border Trouble: The UK Borders Act 2007* *New Law Journal* 158 NLJ 201 8 February 2008
- *Social Rights under Directive 2004/38/EC* *Journal of Immigration Asylum and Nationality Law* Volume 21 Number 3 2007 pp. 233-244

## Pro Bono and Community Work

- European Human Rights Advocacy Centre (EHAC)

### Notable Cases include:



**R(ML(Morocco) v Secretary of State for the Home Department [2016] EWHC 2177 (Admin), High Court.** A period of 10 months' detention under immigration powers while the Secretary of State tried to obtain an emergency travel document for a stateless individual was not unlawful. **Lopes v London Borough of Croydon [2016] EWCA Civ 465, Court of Appeal.** The court determined the correct destination for appeals where there had been an appeal to the county court which had made a determination as to costs and the parties wished to appeal the costs order. **London Borough of Croydon v Y [2016] EWCA Civ 398, Court of Appeal.** A judge should have granted a local authority's application to strike out or stay an asylum seeker's challenge to an age assessment unless he consented to further age assessments where such an order was reasonably necessary to enable the local authority to defend the challenge and the asylum seeker's refusal to give his consent was unreasonable. The principles from *Starr v National Coal Board* [1977] 1 W.L.R. 63 were not confined to private law litigation. **Secretary of State for Home Department v Ojo [2015] EWCA Civ 1301, Court of Appeal.** The acquisition of a permanent right of residence depended on continuous residence with a qualifying status. Residence and immigration status were not analogous and a period during which the requisite financial dependency had been broken could not be ignored. **R(Bondada) v Secretary of State for the Home Department [2015] EWHC 2661 (Admin), High Court.** An applicant who had been born in India to a father who had acquired British citizenship prior to her birth established her entitlement to British citizenship by descent, pursuant to the British Nationality Act 1981 s.11(1), where her mother's passport from 1978 provided clear evidence of her parentage and her parents' marriage. **Secretary of State for Work and Pensions v SF [2015] UKUT 502 (AAC), Upper Tribunal.** Pregnancy and childbirth were not of themselves enough to take a woman off the employment market and so outside the scope of TFEU art.45; a woman was protected by her worker status until such time, not exceeding the "reasonable period" contemplated by *Saint Prix*, as she showed an intention not to be part of the employment market. **B(Eritrea) v Secretary of State [2015] EWCA Civ 141, Court of Appeal.** A Refugee was lawfully entitled to benefits from the date his status was established. **R(Kondrak) v Secretary of State [2014] EWHC 639 (Admin), High Court.** The detention of a Polish national pending administrative removal was unlawful from the outset. **R(Foo Ann Ku) v Secretary of State [2013] EWHC 3881 (Admin), High Court.** At the date of removal of a British Overseas Citizen (BOC) the Secretary of State had reason to believe that the individual would be admitted to Malaysia. **Pryce v London Borough of Southwark, Secretary of State for the Home Department intervening [2012] EWCA Civ 1572 (7 November 2012) Court of Appeal.** Whether an unlawfully present parent of a British citizen/EU citizen child derived a right of residence from the need to enable the child to enjoy the genuine substance of his rights as an EU citizen in the country of his birth; whether EU citizenship after the case of *Zambrano* could confer a directly effective right of residence on that parent that rendered her eligible for homelessness assistance. **Mohan v Secretary of State for the Home Department [2012] EWCA Civ 1363 (23 October 2012) Court of Appeal.** The extent of the procedural protection afforded by article 8 ECHR, when immigration expulsion proceedings are afoot but family proceedings concerning contact with a child are not yet complete. **SL v Westminster City Council, Medical Foundation for the Care of Victims of Torture and MIND intervening [2011] EWCA Civ 954 (10 August 2011) Court of Appeal.** (acted for Medical Foundation by way of written submissions) The correct approach to the construction of s 21(1)(a) of the National Assistance Act 1948 as regards 'care and attention' and whether accommodation is 'otherwise available' when considering whether there is a duty to provide residential accommodation. **Secretary of State for Work and Pensions v Maria Dias [2011] EUECJ C-325/09 (21 July 2011) European Court of Justice.** Whether periods of residence completed prior to the transposition of Directive 2004/38/EC contribute to the acquisition of the right of permanent residence. Whether periods of residence completed in reliance on a Residence Permit contribute to the acquisition of a right of permanent residence. **PM (EEA – spouse – "residing with") Turkey [2011] UKUT 89 (IAC)(7 March 2011) Upper Tribunal.** Regulation 15(1)(b) of the Immigration (European Economic Area) Regulations 2006 applies to those who entered a genuine marriage where both parties have resided in the United Kingdom for five years since the marriage; the EEA national's spouse has resided as the family member of a qualified person or otherwise in accordance with the Regulations and the marriage has not been dissolved. The "residing with" requirement relates to presence in the UK; it does not require living in a common family home. **R(on the application of Birara) v Hounslow Borough Council [2010] EWHC 2113 (Admin)(16 July 2010) Administrative Court.** Accommodation for Children Leaving Care: Whether a local authority's decision to cease to provide a young person previously under its care with support and accommodation once she turned 21 could not stand where, in reaching that conclusion, it had failed to have regard to its own policy to continue to fund education past 21 in exceptional circumstances. **Teixeira (European citizenship) [2010] EUECJ C-480/08 Teixeira v London Borough of Lambeth and another C-**



**480/08 (23 February 2010) European Court of Justice** Whether an EEA national who is both a former worker and the primary carer of her children who are in education, is eligible for homelessness assistance by virtue of enjoying a right to reside pursuant to Article 12 of Regulation (EEC) 1612/68. **R (Ghai v Newcastle City Council and Others & Secretary of State for Justice (Interested Party) & (1) Ramgharia Gurdwara, Hitchin (2) Alice Barker Welfare & Wildlife Trust (3) Equality & Human Rights Commission (4)Hindu Merchants Association (interveners) [2010] EWCA Civ 59 (2010) 3 All ER 380, (2010) 7 EG 101 (CS), Times, February 18, 2010 (10 February 2010) Court of Appeal** Whether the wishes of an orthodox Hindu that his remains be cremated on a traditional fire could be accommodated under the Cremation Act 1902 and the Cremation (England and Wales) Regulations 2008, whether the kind of structure that he found acceptable for his cremation was a "building" within s of the 1902 Act. **Malekout v Secretary of State for Work & Pensions [2010] EWCA Civ 162 (02 February 2010) Court of Appeal** Whether for payments to be disregarded under the Income Support (General) Regulations 1987 Sch.9 para.15(5A)(e) for the purposes of assessing a claimant's entitlement to income support, the agreement giving rise to the payments, and not just the payments themselves, had to have been made in consequence of personal injury to the claimant. **HS v Secretary of State (29 January 2010) SC/69/2008 Special Immigration Appeals Commission** Whether the exclusion a foreign national resident in the UK was in the interests of national security and compatible with Article 8 ECHR. **Low & Ors, R (on the application of) v Secretary of State for the Home Department[2010] EWCA Civ 4 (14 January 2010) Court of Appeal** Whether the decision of the Secretary of State to refuse residence documents to third country nationals otherwise unlawfully present in the UK was contrary to the freedom to provide services under Article 49 of the EC Treaty when such nationals were temporarily employed by an Irish company with a contract to provide services in the UK. **Novitskaya v London Borough of Brent & Anor [2009] EWCA Civ 1260 (01 December 2009) Court of Appeal** Whether a claim for housing benefit can be made without using explicit words to indicate that a claim for housing benefit is being made. The judgment benefits vulnerable persons who make defective claims for housing benefit. **Secretary of State for Work and Pensions v Dias [2009] EWCA Civ 807 (31 July 2009) Court of Appeal** Whether a EU Residence Permit confers eligibility for income support on a single female head of household who left work to care for her child by virtue of Article 16 of Directive 2004/38/EC or Article 18 of the EC Treaty; referred to the European Court of Justice. **Yesiloz v London Borough of Camden & Anor [2009] EWCA Civ 415 (20 May 2009) Court of Appeal** Whether a Turkish asylum seeker on temporary admission and subject to immigration control, as a citizen of a state that had ratified ECSMA, and in respect of whom some provision had been made in social security legislation, ought to be considered as having a right to reside for housing benefit purposes. **Barry v London Borough of Southwark [2008] EWCA Civ 1440 (19 December 2008) Court of Appeal:** Whether an EEA national was eligible for homelessness assistance as a worker where he had worked for two weeks at a tennis championship and sought to retain worker status. **BY v Secretary of State for the Home Department [2008] UKSIAC 65/07 (07 November 2008) Special Immigration Appeal Commission** The application of EU law to an entry clearance application where national security forms the ground for exclusion. **Baiai & Ors, R (On The Application of) v Secretary of State For The Home Department [2008] UKHL 53 (30 July 2008) House of Lords** Whether the scheme introduced by the Secretary of State that limited the rights of those subject to immigration control to enter into a civil marriage infringed the European Convention on Human Rights 1950 Art.12 and was therefore unlawful. The objection inherent in the scheme applied just as much in the case of an illegal entrant as in the case of persons with very limited permission to remain. **Humphries & Ors v Secretary of State for Work and Pensions [2008] EWHC 1585 (Admin) (09 July 2008)Administrative Court** Child Support Agency (CSA) The application of the ex gratia compensation scheme and the use of administrative complaints procedures. **Ehiabor v Royal Borough of Kensington & Chelsea [2008] EWCA Civ 1074 (08 May 2008) Court of Appeal** Homelessness: whether a child born in the UK to a person subject to immigration control, who had never left the country, could be a 'person from abroad' for the purposes of homelessness legislation. **Secretary of State for Work and Pensions & Anor v Boyle & Anor [2008] EWCA Civ 210 (31 January 2008)Court of Appeal** Child Support Agency: The correct construction of secondary legislation where there is an interim maintenance assessment and information is provided to enable a full maintenance assessment to be made. **Christie v Department for Constitutional Affairs & Anor [2007] UKEAT 0140\_07\_2307 (23 July 2007) Employment Appeal Tribunal** Whether a part-time fee paid tribunal chairman was a 'worker' within the meaning of the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Part Time Workers Framework Directive (97/81/EC). **FD (Algeria) v Secretary of State for the Home Department [2007] EWCA Civ 981 (25 September 2007)Court of Appeal** Whether the Secretary of State can rely on the unlawful presence of an unmarried partner of an EEA national to refuse a



residence card, notwithstanding that they are in a durable relationship and whether the Secretary of State can apply the domestic immigration rules to the application (case settled). **Rowley & Ors v Secretary of State for Department of Work and Pensions [2007] EWCA Civ 598 (19 June 2007) Court of Appeal** Whether the Secretary of State for Work and Pensions owed a common law duty of care in negligence to an applicant for child support under the Child Support Act 1991 as such a duty would be inconsistent with the statutory scheme. **Baiai & Ors, R (on the application of) v Secretary of State for the Home Department & Anor [2006] EWHC 1035 (Admin) (10 May 2006) Administrative Court** Whether human rights damages are available and should be awarded to a person where there is a breach of Article 12 and Article 14 ECHR. **Paul-Coker, R (on the application of) v London Borough of Southwark [2006] EWHC 497 (Admin) (03 March 2006) [2006] HLR 32 Administrative Court** Homelessness, interim accommodation pending Review, there was an unreasonable refusal letter failing to adequately apply the ex parte Mohammed test in context of an arguable habitual residence of Claimant. **YD (Turkey) v Secretary of State for Home Department [2006] EWCA Civ 52 (08 February 2006) Court of Appeal**: Inherent power of Court of Appeal to order stay on removal where an appeal from AIT lodged out of time. **Mohamed, R (on the application of) v London Borough of Harrow [2005] EWHC 3194 (Admin) (13 December 2005) [2006] HLR 18 Administrative Court** Homelessness, Interim accommodation pending Review, whether EC workers and EU citizens excluded from consideration. **R (Conde) v Secretary of State [2005] EWHC 62 (Admin) [2005] HLR 452 Administrative Court**: Availability of Children Act services to work seekers from EU Member States. **Burns, R (on the application of) v London Borough of Southwark [2004] EWHC 1901 (Admin) (19 July 2004) Administrative Court**: Whether local authority entitled to rely on Home Office view of immigration status or whether it is required to make its own enquiries. **Chen and Others (Free movement of persons) [2004] EUECJ C-200/02 (19 October 2004) [2005] QB 325, [2005] All ER (EC) 129 [2004] 3 CMLR 1060 European Court of Justice**: Right to reside in UK of primary carer of an EU/Irish citizen in context of right to reside under Article 18 of the EC Treaty. **Zardasht, R (on the application of) v Secretary of State for Home Department [2004] EWHC 91 (Admin) (23 January 2004) [2004] All ER (D) 196 (Jan) Administrative Court**: Destitution of asylum seekers, ambit of Article 3 ECHR. **A, X and Y, & Ors v Secretary of State for the Home Department [2002] EWCA Civ 1502 (25 October 2002) Court of Appeal**: Article 15 ECHR, Derogation, Detention, Discrimination, Article 14 ECHR, Terrorism, National Security. **Secretary of State For The Home Department v. Rehman [2001] UKHL 47 (11th October, 2001) [2003] 1 AC 153, [2002] 1 All ER 122 House of Lords**: Deportation and National Security.

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## MY NEWS

### Garden Court secures number one spot in Legal 500 2017 for second year running

16 October 2017

### The Garden Court Chambers Housing Team respond to the consultation of Terms of Reference of the Grenfell Tower Inquiry

3 August 2017

### Garden Court barristers join #IBelong statelessness debate

2 November 2016

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## PRACTICE AREAS

- Administrative and Public Law
  - Employment law, discrimination and professional regulation
  - Garden Court International
  - Housing
  - Immigration: asylum and human rights
  - Immigration: business and private
  - Immigration: public access
  - Welfare benefits
- 

## EDUCATION

- MA (1994)
  - M. Litt. (1996)
- 

## PROFESSIONAL MEMBERSHIPS

- Administrative Law Bar Association (ALBA)
- Immigration Law Practitioners' Association (ILPA) (Chair)
- Social Security Law Practitioners' Association (SSLPA)
- Haldane Society

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## IN THE MATTER OF JOSH WILSON

## IN THE MATTER OF THE BRITISH NATIONALITY ACTS

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OPINION

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1. I am asked to advise whether Josh Wilson, an Australian Labor Party MP has satisfied all the legal requirements for renouncing British citizenship under UK law, when he completed a Form RN Declaration of Renunciation of British citizenship on 12 May 2016, and dispatched it to the Home Office on 13 May 2016?
2. The Australian Labor Party National Executive endorsed Josh to stand as Labor's candidate for Freemantle on 12 May 2016; this last minute endorsement having been necessitated by the dis-endorsement of Chris Brown, the former Australian Labor Party candidate.
3. Josh executed Form RN Declaration of Renunciation of British citizenship on 12 May 2016.
4. On 13 May 2016 Josh despatched the form, together with supporting documents and credit card details for payment for the processing fee, to the Home Office by International Express.
5. On 16 May 2016 Australia Post confirmed that Form RN had been delivered to the UK Home Office.
6. On 6 June 2016 the Home Office deducted the processing fee from Josh's credit card.
7. On 7 June 2016 the Australian Labor Party (Western Australia branch) nominated Josh to stand for the election as Member of Parliament for Freemantle at the 2016 Federal Election.

8. On 24 June 2016 the Home Office registered Josh's renunciation.
9. The requirements for making a Declaration of Renunciation are as follows.
10. The primary legislative requirements for renunciation of British citizenship are found in section 12 of the British Nationality Act 1981, which provides:

**12 Renunciation.**

(1) If any British citizen of full age and capacity makes in the prescribed manner a declaration of renunciation of British citizenship, then, subject to subsections (3) and (4), the Secretary of State shall cause the declaration to be registered.

(2) On the registration of a declaration made in pursuance of this section the person who made it shall cease to be a British citizen.

...

11. Further detail is provided in the British Nationality (General) Regulations 2003. Regulation 8 of those regulations provides that any declaration of renunciation of British citizenship shall be made to the appropriate authority specified in Regulation 9 and shall satisfy the requirements of Schedule 5.
12. By Regulation 9 (as amended), where a person is present in a Commonwealth country, the appropriate authority to which the application should be made is the Home Office in the United Kingdom.

13. Schedule 5 of the British Nationality (General) Regulations 2003 provides:

**SCHEDULE 5  
REQUIREMENTS AS RESPECTS DECLARATIONS OF  
RENUNCIATION**

1. A declaration shall be made in writing and shall state the name, address, date and place of birth of the declarant.

2. A declaration shall contain information showing that the declarant—

(a) is a British citizen, British Overseas citizen or British subject, as the case may be;

(b) is of full age or, if not, has been married;

(c) is of full capacity;

(d) will, after the registration of the declaration, have or acquire some citizenship or nationality other than British citizenship, British Overseas citizenship or British subject status, as the case may be.

3. A declaration shall contain a declaration that the particulars stated therein are true.

14. By Schedule 5 a declaration shall be made in writing and shall state the name, address, date, and place of birth of the declarant. The declaration must also contain information to show that the declarant is a British citizen, is of full age, is of full capacity, and that he will (after the registration of the declaration) have or acquire some other citizenship other than British citizenship. The declaration must also contain a declaration that the particulars stated therein are true.

15. I have considered the documents and instructions provided to me.

16. In my opinion on the date that he sent his Declaration of Renunciation Form RN to the Home Office, that is on 13 May 2016, Josh had sent all the necessary information required by Section 12 of the British Nationality Act 1981 and Regulations 8 and 9 and Schedule 5 of the British Nationality (General) Regulations 2013.

17. He had taken all the necessary steps to renounce his British citizenship and had supplied all the necessary information, sent the necessary payment details, and had made the appropriate declaration on Form RN.

18. He had taken all the reasonable steps necessary to register his renunciation of British citizenship.

19. It is clear that the UK Home Office had no further questions about the information that he had supplied. The Home Office knew that he was a British citizen and knew the basis upon which he was a British citizen; such knowledge may be inferred as it asked no further questions of him.

20. It is plain that the Home Office took payment for processing his Declaration of Renunciation on 6 June 2016. The receipt from NAB Internet Banking confirms this.
21. It is not clear to me why it then took the Home Office until the 24 June 2016 to register his Declaration of Renunciation. However the question of registration is a matter for the Secretary of State and not for Josh.
22. What is plain is that by 13 May 2016 Josh had done all he needed to do. It is also plain that by 6 June 2016, having received his application on 13 May 2016, that the Home Office had begun to consider his application.
23. In my opinion on 13 May 2016 Josh had done all he needed to do and had taken all reasonable steps to renounce his British citizenship.

Adrian Berry

Garden Court Chambers

1 December 2017



### Joint Advice

#### Background

1. Mr Wilson was endorsed on 12 May 2016 to stand as the ALP's candidate for the House of Representatives in the electoral division known as Freemantle, at the Federal election to be held on 2 July 2016.
2. At that time Mr Wilson was a British citizen. He was aware that s 44 provided that a person who is a citizen of a foreign power was incapable of being chosen as a member of the House.
3. Accordingly on 13 May 2016 Mr Wilson took the steps required by s 12 of the *British Nationality Act* 1981 and the British Nationality (General) Regulations 2003 to renounce his citizenship. In particular the steps taken on that day were to make a declaration of renunciation of his British citizenship in the prescribed form, to send that form to the Home Office together with the prescribed fee and to provide to the Home Office with all necessary information.
4. On 7 June 2016 the ALP nominated Mr Wilson to stand as its candidate as the member for Freemantle.
5. However, at that time, Mr Wilson's declaration of renunciation had not been processed by the Home Office. That occurred on 24 June 2016 upon the registration by the Secretary of State of the declaration. It was only then that Mr Wilson ceased to be a British citizen: *British Nationality Act* s 12(2).
6. Mr Wilson was elected to the House on 2 July 2016.

7. The question in these circumstances is whether Mr Wilson was capable of being chosen as a member of the House. We think it is clear that Mr Wilson was validly elected notwithstanding s 44(i) of the Constitution.

### **The law**

8. The incapacity created by s 44(i) of the Constitution is subject to a qualification. As the High Court explained in *Sykes v Cleary* (1982) 176 CLR 77, 107-108:

It would be wrong to interpret the Constitutional provision in such a way as to disbar an Australian citizen who has taken all reasonable steps to divest himself or herself of any conflicting allegiance. ... [I]t could scarcely have been intended to disqualify an Australian citizen for election to Parliament on account of his or her continuing to possess a foreign nationality, notwithstanding that he or she had taken all reasonable steps to renounce that nationality. ...

What amounts to the taking of reasonable steps to renounce foreign nationality must depend upon the circumstances of the particular case. What is reasonable will turn on the situation of the individual, the requirements of the foreign law and the extent of the connexion between the individual and the foreign State of which he or she is alleged to be a subject or citizen ...'

9. This issue was considered again by the High Court in its recent decision *Re Canavan* [2017] HCA 45. In that case the High Court made quite clear, both in the course of argument and in its reasons for decision, that no party sought to contend that the exception laid down in *Sykes v Cleary* ought not be followed.
10. To the contrary, the High Court confirmed the *Sykes v Cleary* exception. In its joint judgment the Court said:

Where it can be demonstrated that the person has taken all steps that are reasonably required by the foreign law to renounce his or her citizenship and within his or her power, the constitutional imperative [that an Australian citizen not be irremediably prevented by foreign law from participation in representative government] is engaged.

11. In our view Mr Wilson falls squarely within this exception. That is to say, despite the fact that at the time of his nomination he was still a British citizen he had, at that time,

taken not only all reasonable steps to renounce his British citizenship, he had taken all the steps that were required under the relevant British laws.

12. In reaching this conclusion we appreciate that a view has been expressed by some commentators and some eminent constitutional lawyers that the *Sykes v Cleary* exception, as explained in *Re Canavan* only arises where a foreign law in effect “prevents” an Australian citizen from renouncing his or her foreign citizenship. In that event, as such a foreign law would be inconsistent with Australia’s constitutional imperative, the foreign law would not be given effect.
13. Our reading of both *Sykes v Cleary* and *Re Canavan* is to a different effect. We have set out what we think are the relevant passages from the judgments in the two High Court decisions, and we simply cannot accept that they require more of a candidate than to take reasonable steps to comply with the foreign State’s requirements for the renunciation of that foreign State’s citizenship.
14. There is another point that is worth mentioning. The facts concerning Mr Wilson show that by the time of his election he had ceased to be a British citizen. In *Sykes v Cleary* it was accepted that a candidate must be capable of being chosen to sit in either House both at the time he or she nominates as a candidate and also at the time of the holding of the poll. The reason the candidate must be eligible at the time of nomination is, according to the majority view in *Sykes v Cleary* at 100, because nomination “is an essential part” of the process of being chosen. In this respect the High Court followed the English decision on council elections in *Harford v Linskey* [1899] 1 QB 852. This view was followed without argument in *Re Canavan*.
15. Interestingly, however, the *Harford v Linskey* reasoning was the subject of trenchant criticism by Deane J in *Sykes v Cleary*. Obviously his criticism did not carry the day. However, if the issue comes before the High Court in the future (as seems inherently

likely) it may be possible to persuade the Court to allow the point to be reargued. It has some, albeit small, chance of success.

Ray Finkelstein QC  
Castan Chambers

Simona Gory  
Chancery Chambers

13 November 2017

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