



**PROFESSIONAL NEGLIGENCE AND
LIABILITY UPDATE**

LONDON CONFERENCE

“The Ultimate Round Up III”

Thursday, 16th October 2025

PROFESSIONAL NEGLIGENCE LAWYERS ASSOCIATION

LONDON CONFERENCE – “The Ultimate Round Up III”

Thursday 16th October 2025

0900-0930 Registration and refreshments

0930-0935 *“Chair’s Introduction”*

Jayna Patel – Litigation Director, Cardium Law & PNLA South of England Representative

0935-1000 *“Keynote Address”*

His Honour Judge Mark Pelling KC

Judge in Charge of the London Circuit Commercial Court

1000-1035 (inc 5 mins Q&A) *“Retainers between consumers and lawyers”*

Paul Mitchell KC – 4 New Square Chambers

1035-1110 (inc 5 mins Q&A) *“Professional Negligence Update”*

James Counsell KC – Head of Chambers - Outer Temple Chambers

1110-1125 Refreshments

1125-1205 (inc 5 mins Q&A) *“Solicitors' duties: how far do they extend?”*

Melody Hadfield – 4 New Square Chambers

1205-1225 (inc 5 mins Q&A) *“Purchasing claims – Practice and Procedure”*

Piers Elliott – Managing Director - Henderson and Jones

1225-1245 (inc 5 mins Q&A) *“ATE Insurance update”*

Matthew Pascall – Legal Director - Temple Legal Protection

12.45-1415 Lunch – Middle Temple Hall

1415-14.45 (inc 5 mins Q&A) *“Digital Assets and the Hundred Acre Wood”*

Helen Pugh – Outer Temple Chambers

1445-1515 *“A stitch in time – fixing insurance problems for claimant lawyers”*

Thomas Pangbourne & Rachel Auld - Indemnity Law

1515-1545 *“The Forensic Architect’s Perspective”*

Margaret Wright (RIBA) - Hawkins & Associates Limited

1545-1600 Refreshments

1600-1630 *“Tips and Traps – Third Parties (Rights against Insurers) Act 2010”*

David Osborne – Fraser Dawbarns LLP

1630-1645 *“Latest developments in eDiscovery”*

Dominic Tucker – IDiscovery Solutions

1645-1650 *“Chair’s Closing Remarks, Questions and Discussion”*

1650-1700 *“PNLA News Update & Future Events”*

Katy Manley – PNLA President

1730-1900 *“Ye Olde Cock Tavern’ - Fleet Street”*

- Sponsored Drinks - Outer Temple Chambers & 4 New Square Chambers

- invitation to PNLA Network – all Welcome

**PROFESSIONAL NEGLIGENCE AND LIABILITY
LONDON CONFERENCE**
“The Ultimate Round Up III”
Thursday, 16th October 2025
ATTENDEES (1 of 3)

HHJ Mark Pelling KC	London Circuit Commercial Court	London
Atanas Angelov	BSG Solicitors LLP	London
Rachel Auld	Indemnity Law	London
David Bailey	DMH Stallard LLP	Crawley
Nicole Blakey	Penningtons Manches Cooper LLP	London
Jemma Brimblecombe	Kingsley Napley	London
Anna Brooks-Gallerani	Penningtons Manches Cooper LLP	London
Victoria Bunn	Outer Temple Chambers	London
Lauren Clark	Ellisons	Chelmsford
Matthew Clark	Cardium Law	London
Jamela Collins	Temple Legal Protection Ltd	Guildford
Tim Constable	Bates Wells	London
James Counsell KC	Outer Temple Chambers	London
Paul Daniel	The Specter Partnership Ltd	London
Sobashni De Silva	JMW Solicitors LLP	London
Nicky Doble	Independent Mediators	London
Catherine Duggan	Ellisons	Chelmsford
Angus Eames	Ignite Specialty Risk Ltd	London
Piers Elliott	Henderson & Jones	London
Matt Evans	Ignite Specialty Risk Ltd	London
Alice Eveleigh-Taylor	Stanley Tees LLP	Cambridgeshire
Rebecca Garner	Fraser Dawbarns LLP	Cambridgeshire
Paul Grant	BSG Solicitors LLP	London
Elliot Grosvenor-Taylor	Kingsley Napley	London
Melody Hadfield	4 New Square	London
Claire Haverfield	Moore Barlow LLP	Hampshire

Joseph Henry	Ward Gethin Archer Ltd	Norfolk
Daren Hlaing	Henderson Jones	London
Claire Holford	HCR Legal LLP	Reading
Delwar Hussian	Healys	London
Jenny Hutchinson	Wynterhill LLP	London
Sukhbir Kaur	Temple Legal Protection Ltd	Guildford
James Kingston	New South Law Ltd	West Sussex
Andy Lyalle	Temple Legal Protection Ltd	Guildford
Thea Maertens	Gateley Legal	Birmingham
Andrew Maidment	Trowers & Hamlins LLP	London
Katy Manley	PNLA & BPE Solicitors LLP	Cheltenham
Chris McQueen	Cardium Law	London
Vijay Mehan	New South Law Ltd	Littlehampton
Paul Mitchell KC	4 New Square	London
Jamie Molloy	Ignite Specialty Risk Ltd	London
Alice Nash	Hailsham Chambers	London
Laura Nelson	Croft Solicitors	Cheltenham
David O'Brien	Penningtons Manches Cooper LLP	London
Sue O'Brien	The Property Mediators	Woking
David Osborne	Fraser Dawbarns	Kings Lynn
Joanna Osborne	Edwin Coe LLP	London
Thomas Pangbourne	Indemnity Law	London
Matthew Pascall	Temple Legal Protection Ltd	Guildford
Jayna Patel	Cardium Law & PNLA	London
Helen Pugh	Outer Temple Chambers	London

Adam Rizzo	Orrick Herrington & Sutcliffe (UK) LLP	London
Kulwant Sokhal	JMW Solicitors LLP	London
Harriet Strevens	Mills & Reeve LLP	London
Amy Thomas	JMW Solicitors LLP	London
Caroline Thompson	Withers Worldwide	London
Lucy Tolond	DWF Law LLP	London
Dominic Tucker	IDiscovery Solutions Limited	London
Margaret Wright	Hawkins	London



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4 NEW SQUARE
C H A M B E R S



Jayna Patel
Litigation Director, Cardium Law
& PNLA South of England Representative

“Chair’s Introduction”



Jayna Patel

Legal Director

& PNLA South of England Representative

jaynapatel@cardiumlaw.com

0207 101 4888

Jayna qualified as a solicitor in 2007 and has 20 years of litigation experience. She specialised early on in her career in Claimant professional negligence. Jayna has worked in Cardiff, London and Salisbury and Winchester and maintains good connections across the South East and London. She has worked within and outside the legal expense industry.

Jayna now works in the City and her caseload comprises of Claimant professional claims for SME's and Lender clients. She is well versed in alternative funding options and supported by Cardium, which can offer bespoke commercial options to clients.

Jayna lives in Winchester with her husband and young family.



**His Honour Judge Mark Pelling KC
Judge in Charge of the London Circuit
Commercial Court**

“Keynote Address”



His Honour Judge Mark Pelling KC

Judge in Charge of the London Circuit Commercial Court

Mark Pelling was appointed Judge in Charge of the London Circuit Commercial Court in 2019.

He is authorised to sit in the Chancery Division, King's Bench Division, Administrative Court and the Technology and Construction Court as well as the Commercial and Circuit Commercial Courts.

His Honour Judge Pelling grew up and was educated in North East London. He read law at Kings College London and was called to the Bar in 1979.

He practiced from Monckton Chambers and then 3 Verulam Buildings, where he specialised in commercial and construction litigation both in the Courts in England and Wales and in arbitrations both here and abroad.

He was appointed a QC (now KC) and a Recorder in 2003, as a specialist Senior Circuit Judge in 2006 and to his present role as Judge in Charge of the London Circuit Commercial Court in 2019.

This image shows a full page of white paper with horizontal dashed black lines. The lines are evenly spaced and run across the entire width of the page, providing a guide for handwriting practice. There are no margins, text, or other markings on the paper.



Paul Mitchell KC
4 New Square Chambers

“Retainers between consumers and lawyers”

OUR PEOPLE

Paul Mitchell KC

CALL 1999

SILK 2016

LEGAL 500

"A very good advocate, who is able to hammer home the strong points of a case."



✉ p.mitchell@4newsquare.com

☎ +442078222111

Paul is an academically powerful lawyer, imaginative, bold, creative and firmly anchored in the reality of how human beings actually behave in their commercial dealings and in the witness box. His expertise in professional negligence work leads to his instruction on the highest value and most reputationally delicate cases across a wide range of areas of professional practice. In the commercial sphere, he is often instructed in cases where one or both of the parties is French, Italian, Ukrainian or Russian. He has unrivalled expertise in the new tort of malicious prosecution of civil proceedings, having acted in every significant reported case since it was recognised.

Professional Negligence

The bedrock of Paul's work is bringing and defending claims against lawyers. These arise across a wide range of fields of law, in the context of failed or imperfect transactions or the conduct of earlier litigation. He has in recent years handled cases concerning such areas as bank financing, the misconduct of group litigation, financial claims on divorce, intellectual property, investor-state arbitrations, planning, real property transactions, share purchase agreements, dry shipping, tax mitigation schemes, public procurement competitions – indeed, in almost every sphere where lawyers are instructed, Paul has acted in claims arising from their conduct. He frequently acts for or against well-known firms of solicitors and KCs. As well as lawyers, he also acts for and against accountants, particularly in the context of corporate and personal tax advice and in relation to claims by whistle-blowers in Big Four firms; and for tax advisers; financial advisers, company directors, and a variety of other professionals facing claims alleging breach of their professed special skills.

- *LSREF III Wight Limited v Gateley LLP* [2016] EWCA Civ 359, [2016] PNLR 21
- *Healey v Shoosmiths* [2016] EWHC 1723 (QB)

Recent quotes from the Directories include:

"An outstanding advocate who is very intelligent and very easy to get on with. He's very user-friendly, and has a good balance between tenacity and charm." Chambers UK 2022

"My chosen counsel because of the depth of his experience – he's a polymath, has excellent investigation skills and has an interest in legal history, which helped in this case." *"Incredibly easy to deal with, exceptionally bright and knowledgeable and a very effective negotiator."* Chambers UK 2021

"Utterly charming with the mind of an arch-strategist. Exceptionally good at dealing with a very complicated set of facts and issues and magically making the case look simple and straightforward." Legal 500 2021

"Very personable, gets to the nub of the issue quickly and doesn't faff around the edges. He's incredibly calm and cool as an advocate." *"Very bright and becomes part of the team."* Chambers UK 2019

"A brilliant advocate. Very tenacious but clear thinking. He set out sensibly and clearly a technically secure, well-thought-out, compelling piece of advocacy. He gives very robust advice and is prepared to think out of the box." Chambers UK 2018

"A very good advocate, who is able to hammer home the strong points of case." Legal 500 2017

"Charming and incisive, with a real knack for thinking on his feet." *"Phenomenally bright and the advice that he provides is very commercial."* Chambers UK 2017

"He unfailingly gets the answer right and is incredibly easy to get on with." Legal 500 2016

"He makes light work of hard cases and is excellent on his feet. He is a delight to work with and is very good at coming up with pragmatic solutions." *"His main strengths are his attention to detail, legal knowledge and interpersonal skills."* Chambers UK 2016

"He delivers clear advice, is commercially aware, and has strong personal and diplomatic skills." Legal 500 2015

Privacy Policy

Click here for a [Privacy Policy](#) for Paul Mitchell KC.

Transparency Statement

Click here for a [Transparency Statement](#) for Paul Mitchell KC.

Expertise

Professional Liability

"Paul Mitchell is very good with clients and at explaining strategy. His drafting is also really impressive." *"Paul is calm and authoritative."* *"Extremely high quality in all aspects of drafting, advisory work and advocacy."* – Chambers & Partners, 2024

“A very skilled, knowledge and effective advocate. Very user friendly and pragmatic.” – Legal 500, 2024

“He is able to manage complex cases with ease.” – Chambers & Partners

“An outstanding advocate who is very intelligent and very easy to get on with. He’s very user-friendly, and has a good balance between tenacity and charm.” – Chambers & Partners

“My chosen counsel because of the depth of his experience – he’s a polymath, has excellent investigation skills and has an interest in legal history, which helped in this case.” “Incredibly easy to deal with, exceptionally bright and knowledgeable and a very effective negotiator.” – Chambers & Partners

“Utterly charming with the mind of an arch-strategist. Exceptionally good at dealing with a very complicated set of facts and issues and magically making the case look simple and straightforward.” – Legal 500

“He is very thorough and very much on top of his cases. He’s good at identifying opponents’ weaknesses and key points in the case.” “He’s a great advocate who has extremely good judgement. He has a really great instinct for the good and bad points and for how things will turn out.” – Chambers & Partners

“Has an encyclopaedic knowledge of the law.” – Legal 500

“Very personable, gets to the nub of the issue quickly and doesn’t faff around the edges. He’s incredibly calm and cool as an advocate.” “Very bright and becomes part of the team.” – Chambers & Partners

Paul’s professional liability work involves allegations made against solicitors, barristers, accountants (especially tax advisers), fund managers and financial advisers (giving bespoke advice and recommending tax mitigation schemes). He is particularly experienced in questions of scope of duty, causation, the recoverability of losses claimed, and mitigation. In addition to his trial experience, Paul is frequently actively involved in assisting at mediations leading to settlement. He is instructed by both claimants and defendants, and is often asked by both sides to provide a written opinion on the merits to assist with settlement negotiations. He is on the PNBA’s approved list of adjudicators authorised to adjudicate professional liability disputes pursuant to the current Pre-Action Protocol on Professional Negligence claims.

Featured Professional Negligence cases

- *Hugh James Involegal LLP v Berryman Lacey Mawer & Waite QC* [2020] EWHC 3402 (QB)
- *Hall v Saunders Law Ltd* [2020] EWHC 404 (Comm)
- *Willers v Joyce* [2019] EWHC 937 (Ch)
- *Willers v Joyce* [2019] EWHC 2183 (Ch)
- *Financial Conduct Authority v Da Vinci & Ors* [2017] EWHC 2220 (Ch) and [2018] EWHC 3789 (Ch)
- *Bank of Ireland v Watts Group Plc* [2017] EWHC 1667 (TCC) and [2017] EWHC 2472 (TCC)
- *Williams v HCB Solicitors* [2017] EWCA Civ 38
- *Healey & Anor v Shoosmiths* [2016] EWHC 1723 (with Imran Benson)
- *LSREF III Wight Limited v Gateley LLP* [2016] EWCA Civ 359 (with Michael Pooles KC)
- *Swain v (1) Swains (2) Kirby (3) Berry* [2015] EWHC 660 (Ch); [2015] EWHC 1183 (Ch); [2015] EWHC 2585 (Ch).
- *Surv v Goldsmith Williams* [2015] EWCA Civ 1147 (with Annelise Day KC)
- *John Williams v HCB Solicitors Ltd* [2015] EWHC 2064
- *Surv v Goldsmith Williams* [2014] EWHC 1104 (Ch), [2014] PNLR 25
- *Harrison v Technical Sign Co Ltd v Ors* [2013] EWCA Civ 1569, [2014] PNLR 15 (with Michael Pooles KC)
- *Herrmann v Withers* [2012] EWHC 1492 (Ch), [2012] PNLR 28 (with Michael Pooles KC)

Solicitors & Barristers

Paul has very wide experience of claims against solicitors and barristers (particularly KCs) arising from their conduct of both non-contentious and contentious business. In the field of non-contentious business, he has advised and represented claimants and defendants in many claims arising from:

- the drafting of share sale and purchase agreements
- the drafting of standard form documentation for use by a large retail bank to communicate with its customers

- the conduct of retainers to convey real property (residential and commercial, especially commercial leases) instructions to renew commercial leases
- the conduct of leasehold enfranchisements and the extension of fag-end leases
- the taking of security in the form of charges, guarantees and debentures in support of investments in a wide range of sectors, including residential lending, buy-to-let lending, agriculture and fisheries, light industry, the gaming industry and super-yachts
- an alleged failure to notice fraud, including allegations of dishonest assistance
- the conduct of executorships
- conduct as professional trustees

As to claims arising from the conduct of contentious business, Paul has advised and represented claimants and defendants in claims arising from:

- Litigation against local authorities
- Various claims arising from litigation conducted under Group Litigation Orders
- Planning enquiries, including a very substantial planning enquiry in Liverpool
- Opposition to Compulsory Purchase Orders
- Personal injury litigation
- Litigation arising from whistleblowing
- The conduct of unfair prejudice petitions
- Claims where the lawyers are alleged not to have had their ostensible client's authority to act
- Criminal proceedings
- Matrimonial disputes (in particular applications for financial orders)
- Wet and dry shipping disputes, where English lawyers have provided a "team captain" service for litigation in other jurisdictions

Notable reported cases involving lawyers include:

- Hugh James Involegal LLP v Berrymans Lace Mawer & Waite QC [2020] EWHC 3402 (QB)
- Hall v Saunders Law Ltd [2020] EWHC 404 (Comm)
- Willers v Joyce [2019] EWHC 937 (Ch)
- Willers v Joyce [2019] EWHC 2183 (Ch)
- Financial Conduct Authority v Da Vinci Invest Ltd [2018] EWHC 3789 (Ch)
- Williams v HCB Solicitors Ltd [2017] EWCA Civ 38
- LSREF III Wight Limited v Gateley LLP [2016] EWCA Civ 359, [2016] PNL R 21
- Healey v Shoosmiths [2016] EWHC 1723 (QB)
- E.Surv v Goldsmith Williams [2015] EWCA Civ 1147, [2016] 4 WLR 44, [2016] 4 All ER 229, [2016] PNL R 11
- DB UK Bank Ltd v Sinclair Solicitors Ltd [2015] 12 WLUK 607
- Khan v Cranbrook Solicitors [2015] EWHC 2746 (QB)
- Swain v Swains Plc & Ors [2015] EWHC 660
- Swain v Swains Plc & Ors [2015] EWHC 2585
- E.Surv v Goldsmith Williams [2014] EWHC 1104 (Ch), [2014] PNL R 25
- Herrmann v Withers [2012] EWHC 1492 (Ch), [2012] PNL R 28
- Hazelhurst v Solicitors Regulation Authority [2011] EWHC 462 (Admin)
- West Wallasey Car Hire v Berkson & Berkson [2010] PNL R 14
- Byrnell v British Telecommunications & Ors [2009] EWHC 727 (QB)
- Williams v Thompson Leatherdale [2008] EWHC 2574, [2009] PNL R 15
- Leonard v Byrt [2007] EWHC 529 (QB)

Accountants

Paul acts for or against accountants in a wide variety of claims, from failure to detect fraud on audit to negligent advice regarding corporate structure and restructuring, pensions, taxation (personal and corporate), or investment (including investments as part of tax-mitigation).

Featured cases

- Convergence Plc v Chantrey Vellacott [2007] EWHC 1774 (Ch)
- Convergence Plc v Chantrey Vellacott [2007] 7 WLUK 927
- Convergence Plc v Chantrey Vellacott [2008] EWHC 360 (Ch)
- Convergence Plc v Chantrey Vellacott [2008] 3 WLUK 23

Financial Advisors

He acts in claims arising in connection with complex financial schemes designed, promoted or recommended by financial advisers, e.g. split cap investments, the Stax investment scheme, the Innovator investment scheme, film finance schemes, enterprise zones, multi-currency mortgages, forex trading, futures trading, derivatives trading.

Surveyors & Valuers

During the post financial crisis wave of lender claims between 2008 and 2017, Paul acted in dozens of claims against surveyors, instructed by claimant banks, defendant surveyors, solicitors seeking contribution from surveyors and surveyors defending contribution claims brought by solicitors. He has also acted in several claims involving the valuation of unusual properties, such as fish farms, business parks, amusement arcades, caravan sites, nursing homes, hotels and student accommodation, as well as more standard valuations of commercial property such as leases in shopping centres, office blocks, new build apartments and of course residential property. His extensive experience of lender claims has covered all aspects of lender contributory fault as well as defences such as limitation, scope of duty, date of accrual of loss, mitigation etc. He has also acted in more unusual claims against surveyors alleging extensive duties of care: see in particular *Harrison v Technical Sign Co Ltd & Ors* [2014] EWCA Civ 1569; and claims involving alleged fraud by surveyors.

Featured cases

- LSREF III Wight Limited v Gateley LLP [2016] EWCA Civ 359 (date of accrual of lender's loss)
- Surv v Goldsmith Williams [2015] EWCA Civ 1147 (lender entirely responsible for loss)

Insolvency Practitioners / LPA Receivers

Paul acts in claims where IPs or LPA receivers are alleged to have failed to raise the true value of assets following bankruptcy or insolvency. He also has substantial experience of coverage disputes between IPs and their insurers, including in cases where dishonesty is alleged against the insured.

Featured cases

- Nautch v Mortgage Express [2012] EWHC 4136 (Ch)
- Rawnsley v Weatherall Green & Smith North Ltd [2009] EWHC 2482 (Ch), [2010] BCC 406, [2010] PNLR 6

Insurance Brokers

He acts in claims against insurance brokers by clients alleging that the broker failed properly to ascertain the full nature of the risk to be insured; or failed adequately to explain to the client the limitations on coverage.

Coverage Disputes & Arbitrations

Paul acts in connection with disputes regarding the scope of coverage of policies of professional indemnity insurance, and in particular coverage questions under the Minimum Terms and Conditions for solicitors' PII. He has substantial experience of arbitrations of such coverage disputes, with particular expertise in questions involving dishonesty, reimbursement, and the application of the Successor Practice rules contained in the MTC.

Commercial Law

Paul acts in a wide variety of commercial disputes, both in England and offshore. He has particular experience of freezing injunctions, shareholder disputes, company valuation disputes, professional negligence claims (in particular against lawyers and tax advisers) and fraud (alleged Ponzi schemes, SDLT avoidance schemes, money laundering and sanctions avoidance schemes). He speaks Russian, Italian, French and Farsi has a particular interest in cases with connections to countries where those languages are spoken.

Malicious Prosecution of Civil Proceedings/ Abuse of Process

Paul is the leading practitioner in England & Wales for these new claims, having appeared in *Willers v Joyce*, the long-running litigation that gave extended the tort of malicious prosecution to civil claims; advising the winning party in the equivalent case in the Singaporean Supreme Court, *Lee Tat Development Pte Ltd v MCSTP No 381* [2018] SGCA 50; representing the wife in *CXZ v ZXC*, the first case arising from bitterly contested Child Arrangement Order proceedings; acting for the claimant in *Mosley v Associated News Limited*, the case arising from *The Daily Mail's* submitting a "dossier" about Max Mosley to the Crown Prosecution Service; and acting for the claimant in the ongoing *Monks v East Northamptonshire Council*, the case arising from the travails of Private Eye's "Lowick One".

Complex remedy claims

Paul is often instructed in claims where the analysis of causation and quantification of loss are very difficult. High profile cases in 2020 were *Sogexia Sarl v R Raphael & Sons Plc*, where an application for a *quia timet* injunction against a bank entering Members' Voluntary Liquidation is current under appeal to the Court of Appeal; *YJB v M&A Pharmachem*, where Paul and Tom Shepherd's client was found to have caused no loss to the claimant despite being found at an earlier trial on liability to have been in breach of a covenant against competition; and *Involegal v BLM*, where Paul, leading Christopher Boardman KC, successfully resisted summary judgment on a cause of action assigned by an insolvent company. Paul is currently instructed by one of the principal defendants in the sprawling and multi-jurisdictional *SKAT* litigation, a case concerning the alleged liability of agents for representations made by their principals when seeking to claim withholding tax relief on share dividends.

Fine art and equestrian litigation

Paul often acts in cases involving the valuation or movement of these unusual precious assets. In recent years, he has acted in a claim under ecclesiastical law concerning the sale of an Ittenbach by a church in Cheltenham (*In Re Emanuel Church, Leckhampton before a consistory court of the Diocese of Gloucester*); for a dealer suing a German auction house for fraudulent misrepresentation; for an Italian collector, beneficial owner of an offshore company that in turn owned various important pieces of modern art, in obtaining an injunction on confidential terms; for a dealer regarding a professional negligence claim against an expert in an Old Master; for a consortium of owners obtaining an injunction restraining transport of a stallion from Heathrow to participate in the Southern Hemisphere Breeding Season; and for the owner of a showjumper which was crippled by a farrier; for the owner of a dressage horse accidentally killed while at a stud farm for embryo harvesting.

Featured Commercial cases

- *YJB Port Ltd v M&A Pharmachem Ltd* [2021] EWHC 42 (Ch)
- *Mosley v Associated Newspapers Limited* [2020] EWHC 3545 (QB)
- *Hugh James Involegal LLP v Berryman's Lace Mawer & Waite QC* [2020] EWHC 3402 (QB)
- *Newton Equine Services v Sewell* [2020] 12 WLUK 18
- *Sogexia Sarl v R Raphael & Sons Plc* [2020] 7 WLUK 501 (appeal outstanding)
- *CXZ v ZXC* [2020] EWHC 1684 (QB)

- Hall v Saunders Law Ltd [2020] EWHC 404 (Comm)
- Willers v Joyce [2019] EWHC 937 (Ch)
- Willers v Joyce [2019] EWHC 2183 (Ch)
- Willers v Joyce & Nugent [2016] UKSC 43, [2016] UKSC 44 (with Bernard Livesey KC)
- Healey & Anor v Shoosmiths [2016] EWHC 1723 (with Imran Benson)
- Swain v (1) Swains (2) Kirby (3) Berry [2015] EWHC 660 (Ch); [2015] EWHC 1183 (Ch); [2015] EWHC 2585 (Ch).
- Bank of Scotland v Watson [2013] EWCA Civ 6
- Eminence v Heaney [2010] EWCA Civ 1168, [2011] 2 All ER (Comm) 223 (with Bernard Livesey KC)
- Wave v Batra [2008] EWHC 1014 (QB); [2008] EWCA Civ 914

Arbitration & Mediation

Paul is frequently instructed as an advocate in arbitration proceedings, and is an accredited mediator trained at the Regent's School of Psychotherapy and Counselling under the late Dr Freddie Strasser. He is often invited by clients to attend mediations as he is an active and constructive contributor to obtaining satisfactory resolution of the dispute at hand. He has chaired numerous committees over the course of his career, including almost every year one of Lincoln's Inn's major scholarship award panels, and has a low-friction, respectful but firm style of leading panels to well-reasoned, soundly-evidenced decisions supported by all members of the committee or panel.

Regulatory & Disciplinary

Paul's experience of professional negligence claims is a critical component of his practice in regulatory and disciplinary work, whether acting for the complainant before the Taxation Disciplinary Board (the disciplinary body for the Chartered Institute of Taxation and the Association of Taxation Technicians) or defending before the ICAEW Disciplinary Tribunal or the Solicitors' Disciplinary Tribunal. He is often asked to advise solicitors and accountants regarding complaints and disciplinary investigations, and has been instructed on several occasions by the Taxation Disciplinary Board to make amendments to the regulations governing its disciplinary procedure.

Information Technology

Paul was junior counsel in the £100 million *Convergence v Chantrey Vellacott* claim ([2007] EWHC 1774 (Ch); [2008] EWHC 360 (Ch); various other decisions without neutral citation numbers) in which a telecoms company alleged that its business in Greece had been destroyed by the negligence of its advisers; the case mainly revolved around detailed expert analysis of the relevant technology and its associated licensing regime. Since then his work in this field has mainly concerned cases involving cyber-fraud, in particular where solicitors' client accounts have been targeted by fraudsters via hacked email accounts and/ or fake emails purporting to come from clients or counterparties.

Since 2017, Paul has been on the board of Ampbar Limited, a lawtech company which provides a platform linking solicitors, barristers and insurers in certain types of claim.

Jurisdiction

Paul has extensive experience of the law relating to establishing jurisdiction in both England & Wales and the BVI, acting for both claimants seeking to establish jurisdiction and defendants seeking to resist it. In the last two years, he has acted in claims where the proper law of the claim has been (arguably) Azerbaijani, French, Greek, Indian, Israeli, Italian, Manx, Panamanian, Turkish or the law of one of the United States of America; often the jurisdiction question has been resolved by the identification of an appropriate anchor defendant.

Sanctions

Paul has frequently advised regarding the meaning and effect of the Russia (Sanctions) (EU Exit) Regulations 2019 in the context of enquiries from or regarding the current status of economic entities in various jurisdictions; and enquiries from solicitors regarding their regulatory obligations when dealing with a client to whom the 2019 Regulations might apply.

Costs

Paul's extensive experience in claims arising from earlier litigation, particularly claims against lawyers, has given him particular insight into the handling of disputes connected with legal costs. In recent years, besides being involved in many cases where a principal head of damages has been in respect of costs incurred in earlier proceedings (see in particular *Herrmann v Withers* [2014] PNLR 15, the leading case on how costs awarded as damages should be assessed, indemnity or standard basis; and *Willers v Joyce* [2018] AC 843, the leading case on the recovery of "extra" costs, i.e., the difference between what a client received on detailed assessment and the actual sum paid to his or her lawyers), Paul has also been instructed:

- To advise in a claim arising from a firm of solicitors' failures to understand the effect of the costs regime in a case subject to a Group Litigation Order;
- To assist applicants for litigation funding in preparing their term sheets for potential funders
- To obtain costs against non-parties (see in particular *Convergence v Chantrey Vellacott* [2007] EWHC 1774 (Ch) and *Willers v Joyce*, forthcoming).

Awards



Directory Rankings

Chambers & Partners

- Professional Negligence

Legal 500

- Professional Negligence
-

Qualifications

Before coming to the Bar, Paul read Oriental Studies at King's College, Cambridge, graduating with a First in 1990. He then studied for an MA in Middle Eastern politics, law and economics at the School of Oriental and African Studies before returning to Cambridge for his PhD in the life and works of a twentieth-century Iranian poet.

Languages: Farsi, French, Italian, Russian, Spanish. In 2010 he was editor and co-translator into English of the Catalan novel "Stone in a Landslide", one of Peirene Press's first publications.

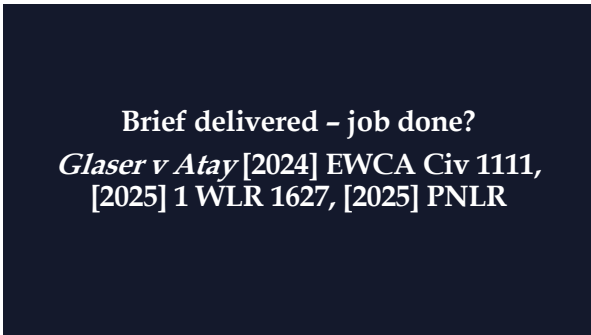
Paul has two daughters.

Other committees, boards and charities

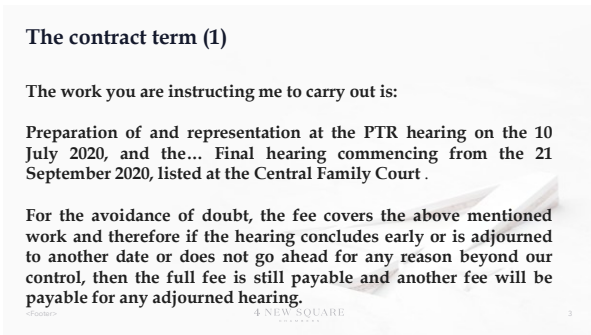
Paul is a trustee of Alsama Project, a charity offering new horizons to refugee teenagers and women in Lebanon.



1



2



3

The contract term (2)

My fees for this work

My fee for accepting the instruction to appear as an advocate on the occasions described above will be £90,000 plus VAT. You and I agree that I will not attend the hearing unless you have paid the fee in advance .

Total fees for my work as described above (exc VAT):
£90,000

©Footnote

4 NEW SQUARE

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Consumer Rights Act 2015

62 Requirement for contract terms and notices to be fair

(1) An unfair term of a consumer contract is not binding on the consumer.

(4) A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

(5) Whether a term is fair is to be determined – (a) taking into account the nature of the subject matter of the contract, and (b) by reference to all the circumstances existing when the term was agreed and to all of the other terms of the contract or of any other contract on which it depends.

©Footnote

4 NEW SQUARE

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Job done badly?

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Consumer Rights Act

57 Liability that cannot be excluded or restricted

(3) A term of a contract to supply services is not binding on the consumer to the extent that it would restrict the trader's liability arising under any of sections 49 and 50 and, where they apply, sections 51 and 52 (reasonable price and reasonable time), if it would prevent the consumer in an appropriate case from recovering the price paid or the value of any other consideration. (If it would not prevent the consumer from doing so, Part 2 (unfair terms) may apply.)

<Footer>

4 NEW SQUARE

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Consumer Rights Act

Grey list, example 2:

‘A term which has the object of inappropriately excluding or limiting the legal rights of the consumer in relation to the trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any of the contractual obligations...’

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4 NEW SQUARE

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Competition and Markets Authority Unfair Terms Main Guidance

5.6.1 If a contract is to be fully and equally binding on both trader and consumer, each party should be entitled to full compensation where the other fails to honour its obligations. Clauses which limit the trader's liability are open to the same objections as those which exclude it altogether...

5.6.2 Use of a term restricting liability for breach of consumers' rights under Part 1 of the Act is very likely to be blacklisted as well as unfair... and as such its use may give rise to enforcement action as a misleading commercial practice... in the same way as terms that exclude liability in full

Para 5.6.2, footnote: ... in the CMA's view, any term limiting the amount of compensation the consumer would be entitled to claim would be under strong suspicion of unfairness

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4 NEW SQUARE

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Contentious Business Agreements

Section 60(5) of SA 1974 (as amended by Schedule 16, paragraph 56(c) of the Legal Services Act 2007)

A provision in a contentious business agreement that the solicitor shall not be liable for his negligence, or that of any employee of his, shall be void if the client is a natural person who, in entering that agreement, is acting for purposes which are outside his trade, business or profession

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Thank you

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James Counsell KC
Head of Chambers
Outer Temple Chambers

“Professional Negligence Update”

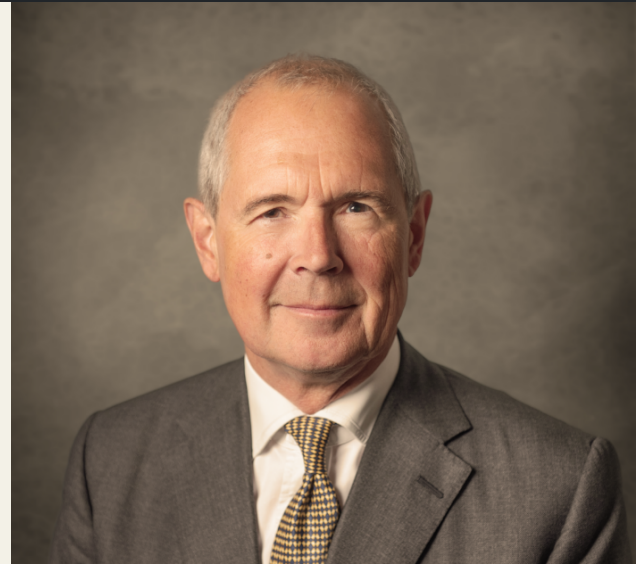
James Counsell KC

Year of Call: 1984

Year of Silk: 2017

Direct Access: Yes

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James Counsell KC is widely recognised in the fields of **Clinical** and **Professional Negligence, Personal Injury, regulatory and disciplinary** hearings and **Financial Services** claims, both in the UK and abroad.

His clinical negligence work, acting both for claimants and for defendants, is combined with a busy disciplinary and regulatory practice, regularly representing doctors, dentists, barristers, solicitors and those in the financial services sector in their respective disciplinary tribunals. He acts both for practitioners and also for the **BSB** and the **SRA**.

In the field of **financial Services**, James acts for defendants in contempt proceedings in the Business and Property Courts, brought against individuals for alleged breaches of freezing and disclosure orders and for claimants and financial institutions in mis-selling claims and other regulatory breaches. He represents litigants in the UK and also in the Middle East with ongoing clients in the DIFC Courts in Dubai.

He also specialises in acting for survivors of non-recent sexual abuse. He was lead counsel (leading **Benjamin Bradley KC**) in two claims against the Jehovah's Witness organisation, the second of which is now a leading Supreme Court authority on vicarious liability and limitation. He has acted for numerous claimants in cases against football and other sports clubs and entities, religious and educational organisations and the Scout Association.

James is a Head of Chambers at **Outer Temple Chambers** and its Head of Governance.

Areas of Expertise

Clinical Negligence

James has recently acted on both sides in a number of high value claims, including CP cases and other brain damage at birth cases. He has also recently worked on cases in the fields of obstetrics (delivery delay, leading to brain damage / failure to intubate, leading to death), general practice (failure to act on histological report indicating carcinoma / failure to refer to specialist, leading to amputation, failure to identify cancerous mole, failure to advise on hepatitis, failure to identify diabetes), vascular surgery (failure to treat post-thrombotic syndrome), paediatrics (failure to detect hip dysplasia, shortly after birth), obstetrics (negligent caesarean section) and negligent laser eye surgery.

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The split of his work is roughly 50:50 between claimant and defendant.

Notable Clinical Negligence cases

Featherstone-Harvey v Royal Cornwall Hospitals NHS Trust

Claim by Estate of patient suffering from acute myeloid leukaemia who was negligently exposed to sewage backflow in a shower, leading to sepsis and premature death because he was unable to withstand chemotherapy which would have prolonged his life. Recently settled.

Robus v Yeovil District Hospital NHS Foundation Trust and Somerset NHS Foundation Trust

Defended claim against two hospitals for allegedly negligent treatment, including spinal surgery, leading to paraplegia and need for very extensive care.

Smith v Royal Wolverhampton NHS Trust

Acting for Trust in claim for alleged negligent care in days leading up to birth of child and consequential delays in delivery, leading to quadriplegic cerebral palsy, developmental delay and focal seizures.

Maller v Optimax Clinics Limited & Ayoubi

Claim against laser eye clinic and consultant ophthalmologist for negligent care and treatment and failure properly to advise on risks and alternatives when consenting patient, leading to very severe corneal neuralgia. Trial in October 2023 but settled shortly before trial.

Heaney v Royal Cornwall Hospitals NHS Trust and Another

Acted for claimant in claim against two Trusts for negligent treatment of very serious leg injuries after motorcycle accident, leading to amputation six months later. Liability recently settled.

ZZZ v Yeovil NHS Foundation Trust

Claim by insurers of negligent driver for contribution against hospital for alleged delayed diagnosis of spinal fracture leading to paraplegia. Acted for Trust in successful defence of claim.

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Disciplinary & Regulatory

A longstanding background in regulatory and disciplinary work beginning with his work for Lloyd's of London (nearly 40 cases over 20 years) and now spanning the whole range of regulatory work both for and against professionals, including appearing in hearings involving doctors, dentists, accountants, solicitors, barristers, IFAs and actuaries.

Regularly instructed by the **BSB** and the **SRA**, he prosecutes misconduct hearings against solicitors and barristers for dishonesty and sexual impropriety as well as defending.

He is also frequently instructed by all the principal medical defence organisations to represent doctors and dentists at the General Medical Council (the MPTS) and General Dental Council. His work has involved the full range of misconduct and health cases, including clinical malpractice, dishonesty, sexual misconduct and health/addiction-related cases and he regularly conducts appeals in the Administrative Court.

Notable Disciplinary & Regulatory cases

General Medical Council v Dutta (1)

Defended a cosmetic surgeon alleged to have dishonestly misled his patient over identity of supplier breast implants and put pressure on patient to have surgery with offer of price reduction, together with a series of other allegations of misconduct in 4-week FTP hearing. Some of misconduct found proved (not dishonesty) and suspended for nine months. Combined statutory appeal against all findings and judicial review – successful on most of remaining allegations – case sent back to Tribunal by High Court Judge (Warby J) where Dr Dutta's fitness to practise was found not to be impaired. [2020] EWHC 1974 (Admin).

General Medical Council v Dutta (2)

Represented Dr Dutta (appeal only) in Administrative Court (HHJ Belcher as a Deputy HCJ), on appeal from MPT decision to strike him off arising out of findings of dishonesty on his part in course of a CQC investigation. Some of findings overturned and case sent back to fresh MPT for reconsideration (pending) [2024] EWHC 1217 (Admin).

Bar Standards Board v A Barrister

Prosecuting for BSB in disciplinary proceedings against a leading criminal silk for misconduct arising out of allegations which he made about the conduct of the prosecution team, including four QCs, in a criminal trial where he was defending, where he accused the prosecution of acting in bad faith without having adequate grounds for such an allegation.

Unsuccessful JR application by Defence in respect of case management decision. Trial over 8 days remotely.

Bar Standards Board v Nicola Cain

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Defended in high profile case where high flying employed barrister accused of dishonestly altering court order to deceive client and other acts of dishonesty, whilst suffering mental health issues and enormous pressure at work. Difficult plea in mitigation did not save her from inevitable disbarment.

GMC v Onyekpe

Defended an A&E doctor who admitted having sex with a patient in an A&E department toilet. Suspended for six months but then referred to the Court by the PSA on ground that case had been under-prosecuted by GMC and remitted back after a full appeal. Case reheard by MPT and six months suspension ordered again.

SRA v Khan and Others

Represented SRA in three separate cases arising out of a Daily Mail covert 'sting' operation, alleging solicitors were inventing stories for 'illegal immigrant' 'clients' to improve their prospects of achieving political asylum.

SRA v Simpson Thacher & Bartlett LLP; SRA v Teacher Stern LLP & Others; SRA v Osmond & Flaherty

Acted for SRA in disciplinary proceedings brought against various firms and individuals for breaches of anti-money laundering regulations and of the Solicitors account rules, leading, in the first case, to an agreed and approved settlement just prior to trial of £300,000 plus £62,000 costs.

Commercial Disputes

James has particular expertise in financial regulatory work and in contempt of court cases arising out of alleged breaches of disclosure and freezing orders. His cases often have an international dimension but mainly in the Middle East where he has acted in multi-million-pound disputes and ground-breaking decisions. He also provides advocacy training in the region, at the DIFC Academy, for students from all over the world completing the Common Law Advanced Advocacy Skills, a course for Emirati Advocates and other civil law trained lawyers, in-house counsel, and legal professionals seeking to diversify their skills and enhance their professional development.

He has recently defended three individuals accused of contempt of court for alleged breaches of disclosure and freezing orders, all three of which involved lengthy trials in the B&P Courts and appeals to the CA.

Notable Commercial Disputes cases

Al Soor Investments LLC and Others v Julius Baer (Middle East) Limited and Others

Acting for Claimants in claim against Swiss Bank and its Middle Eastern arm brought in DIFC Courts arising out the provision of investment advisory and placement services provided by the Defendant bank after Claimant had been advised to invest about AED 700 million in equity swaps, leading to very significant losses. Two preliminary hearings have taken

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place, both remotely, relating to jurisdiction and pre-action disclosure (judgment on latter just received).

Lakhan v Lamia [2021] CA 001

Appeal to the DIFC Court of Appeal in this ground-breaking jurisdiction decision which dealt with the circumstances in which a stay should be granted when a matter is referred to the Joint Judicial Committee ("JJC") because proceedings have been brought in the onshore Dubai Courts after a claim to the DIFC Courts had already been made by the other party.

Court of Appeal revised its historical practice of automatically staying proceedings upon petitions being made to the JJC, by confirming that, in order for any stay to take effect, there must first be a positively determined "conflict of jurisdiction", and the mere existence of two sets of proceedings before the DIFC Courts and the onshore Dubai Courts is no longer a sufficient basis on which to stay proceedings.

Very significant judicial decision grappling with tensions between local courts and DIFC Courts jurisdictions Reported at [2021] CA 001.

BMIF 4-7 v Rizwan Hussain

Fully contested contempt proceedings arising out of an alleged sustained attack by client to obtain control of high value assets owned by claimants, being notes issued as securitisations of various portfolios of commercial mortgages relating to property in the United Kingdom in order to "wrest control" of the Claimant companies. Client alleged to be in breach of previously ordered injunction by repeating his allegedly unlawful activity.

Six-day contempt trial in September 2022 before Miles J, leading Alex Haines (judgment in March [2022] EWHC 449 (Ch)) leading to findings of contempt and a two year maximum sentence of imprisonment and then appeal to CA, heard and refused by Court in July (judgment September 2020 [2022] EWCA Civ 1264).

Very important issues decided: (1) circumstances when application needs permission to appeal and (2) whether there is a power retrospectively to dispense with service of injunction – certificate of public importance granted by CA (Arnold, Stuart-Smith and Nugee LJ). Application to appeal to SC refused.

Isbilen v Turk

Claim by 76-year old exiled wife of former leader of opposition in Turkey (the latter now serving life imprisonment) to recover the alleged misappropriation by Mr Turk of approx £40 million. Worldwide freezing order and disclosure injunction made to trace monies. Defence to main claim is that Claimant authorised the payments, including a payment of about £1.4 million to the Duke and Duchess of York, as part of steps taken by Mr Turk to assist her in removing money clandestinely from Turkey without alerting authorities. Highly complex tracing exercise to track down the proceeds of investment by Mr Turk, who was alleged to have breached terms of disclosure order leading to the contempt proceedings.

With **Helen Pugh**, represented Defendant in contempt trial over 9 days in late 2023 before Sir Anthony Mann, s/a High Court Judge, who committed Defendant for 12 months and then on appeal to Court of Appeal. CA (Lewison, Moyland,

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Laing LJ) suspended sentence [2024] EWCA Civ 568. Case ongoing.

Barclays Bank v Dylan, Antrobus and Mason

Represented Mr Mason, leading Michael Uberoi, in contempt of court trial before Rajah J (judgment pending) arising out of alleged breaches of freezing orders within proceedings for recovery of moneys lent to companies with which defendants involved. Mr Dylan admitted some of breaches during trial but case fully contested by other two defendants. Appeal against findings and sanction.

Personal Injury

James acts mostly for claimants in the full range of personal injury work. For the past few years, he has specialised in acting for survivors in non-recent sexual abuse claims against numerous institutions, schools and individuals and is a leading claimant lawyer in this field, regularly being asked to speak on topical issues.

He was lead counsel in the first two successful claims (leading **Benjamin Bradley**) against the Jehovah's Witness organisation, leading now to a large number of claims against the JW and also against football and other sports clubs, one of which (against Blackpool FC) was tried in early 2020, judgment given for the Claimant and overturned on appeal and more recently (2022) in an 8 week trial against Manchester City. An appeal in the second JW case was heard by the SC in February 2023. All of these cases are ground-breaking in terms of identifying how far the concept of vicarious liability can go in the context of claims against sporting organisations.

He acted for very many claimants in claims against various football clubs arising out of the abuse committed by Barry Bennell and Frank Roper and has a raft of cases for claimants against schools, religious organisations, the Scout Association and other sporting clubs and associations. He regularly speaks on these issues. With Olinga Tahzib, he was instrumental in drafting a compensation scheme for survivors of sexual abuse at a care home, which is now operation and has provided compensation for over 50 survivors outside the court process.

Besides these claims, James has a busy practice in complex high value PI claims, mostly but not exclusively for claimants. He recently acted pro bono with Colm Nugent (Gatehouse) in a high value brain damage for an uninsured horse livery yard owner where a horse had escaped causing an RTA and has just settled a claim brought by the adopted mother of a child who suffered 'shaken baby syndrome', leading to brain injuries of the greatest severity by one or other of his parents allegedly as a result of a failure to take the child into care by the local authority.

Notable Personal Injury cases

Harris v Dudley BC

Claim by adopted mother that child's very severe brain injuries from shaken baby syndrome, directly caused by parents would have been avoided by timely local authority intervention. Claim brought in common law and under HRA led to high value settlement, subject to pending Court approval.

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BXB v The Trustees of the Barry Congregation of Jehovah's Witnesses and another

Claim against Jehovah's Witnesses arising out of rape of member of congregation by one its elders in 1990. Successful claims for damages at trial (Nov/Dec 19) before Chamberlain J in the High Court. [2020] 4 WLR 42; [2020] EWHC 156 (QB).

Also important for costs decision: the Defendant refused to negotiate in the face of repeated efforts to engage them in settlement negotiations. James was then successful in obtaining an indemnity costs sanction. Chamberlain J said this was not just because the Claimant 'beat' her own offer but also because he held that the Defendants had conducted the claim unreasonably. [2020] EWHC 656 (QB).

Appeal by Defendant to CA dismissed [2021] 4 WLR 42; [2021] EWCA Civ 356 but recently appealed successfully to SC [2023] UKSC Civ 356.

DSN v Blackpool Football Club Limited [2020] EWHC 595 (QB), [2020] EWHC 670 (QB) (costs judgment)

Claimant sexually abused by club scout and coach, Frank Roper on a football tour to New Zealand in 1987 when claimant was aged 13. Football club refused to accept legal responsibility for abuse despite tour effectively being a tour by a team of young Blackpool players. Successful on vicarious liability issues and claim also successful despite being 25 years out of time and awarded damages. [2020] EWHC 595 (QB).

Griffiths J awarded indemnity costs against Defendant for refusing to negotiate and for way proceedings conducted, including club's refusal to negotiate. [2020] EWHC 670 (QB);

Subsequent successful appeal [2021] EWCA Civ 1352 and application for permission to appeal to Supreme Court rejected.

TVZ and Others v Manchester City Football Club Ltd

Acting for eight claimants severely affected by very serious sexual abuse by Barry Bennell football coach employed by above named professional club thirty or so years ago. Barry Bennell was convicted in high publicity criminal trials.

Limitation and legal responsibility for abuse (vicarious liability) main issues at trial (Johnson J) but also whether suffered injuries and how much claims worth.

High profile tried over 7 weeks in Autumn 2021. Claims failed but appeal to CA pending.

AXM and Others v Chelsea Football Club Ltd

Acting for four black claimants severely affected by racist abuse by youth coach, Graham Rix and development manager, Glyn Williams when playing for Chelsea's youth teams.

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Limitation and legal responsibility for abuse (vicarious liability) main issues at trial to be heard in March 2022 but also whether suffered injuries and how much claims worth.

Claims settled by Chelsea for "six figure" undisclosed sums shortly before trial after club took back conduct of case from its insurers.

Schoultz v. Ball and others

Claim by teenage claimant who suffered serious brain injury when travelling as passenger in taxi which collided with horse at night on A3. Complex liability issues including multiple defendants and claims under Animals Act 1971 and in negligence.

Acting pro bono for owner of field from which the horse escaped, and who was uninsured after insurers refused to indemnify.

Claim tried on liability in June 2022 but claim against client was settled very shortly before trial in view of her lack of means.

Various Claimants v Secretary of State for Health and Social Care

Claim by 85 claimants who suffered non-recent sexual and physical abuse during stay in Hill End Adolescent Unit whilst under excessive and unnecessary sedation. Currently negotiating terms of a compensation scheme to provide redress. Over 50 claimants have now received awards.

Sports Law

James Counsell appears for clients before a wide range of disciplinary tribunals. Over the years, he has developed a busy and successful practice in defending and prosecuting across a wide range of professional disciplinary tribunals. His considerable experience in the medical and legal field, defending and prosecuting doctors, solicitors and barristers, often in high profile cases, has provided him with the opportunity and skills to develop his practice into **Sports Law**.

He recently acted for the Bar Standards Board in a high profile case (name of respondent withheld) arising out of **BHA** disciplinary proceedings against a jockey and trainer.

Outside the disciplinary field, James has significant expertise in claims alleging failures to safeguard and for breach of their duty of care by sporting organisations.

Amongst his current cases, leading **Ben Bradley KC**:

- He has recently represented the survivors of abuse committed by Barry Bennell in multiple claims against Manchester City and Crewe Alexandra;
- He also acted for survivors in claims of sexual abuse by **Frank Roper against Blackpool Football Club**; and

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- He was Counsel instructed in a series of high profile claims against Chelsea FC by claimants who were allegedly abused, physically and racially, by a former youth coach and international player.

Many of these High Court claims are ongoing. James's expertise in safeguarding claims has led him to act for claimants in very many historical sex abuse claims against, amongst others, religious organisations, schools, the scouts, together, as mentioned above, with football clubs and other sporting bodies.

He accepts instructions on a Direct Access basis in appropriate cases.

Notable Sports Law cases

FXF v English National Karate Federation

Claim by young international gold medal winner and British Karate Champion against federation for damages arising out of psychiatric injuries caused by sexual relationship instigated by national coach when she was under-age, leading to the destruction of her career.

Claim for liability for assault and breach of duty by coach and for failures in the investigation of her complaint.

James, together with [Olinga Tahzib](#), recently represented the Claimant at a hearing before the Court of Appeal, the Master of the Rolls presiding, where the court finally put to bed the issue as to whether an application to set aside a judgment in default was an application for relief from sanction to which the Denton principles applied.

Full story [here](#).

Schoultz v. Ball and others

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Acting pro bono for owner of field from which the horse escaped, and who was uninsured after insurers refused to indemnify. Claim tried on liability in June 2022 but claim against client was settled shortly before trial in view of her lack of means. [Jonathan Hand KC](#), [Nathan Tavares KC](#) and [Harriet Jerram](#) acted for other parties.

DSN v Blackpool Football Club Limited [2020] EWHC 595 (QB), [2020] EWHC 670 (QB) (costs judgment)

Claimant sexually abused by club scout and coach, Frank Roper on a football tour to New Zealand in 1987 when claimant was aged 13. Football club refused to accept legal responsibility for abuse despite tour effectively being a tour by a team of young Blackpool players. Successful on vicarious liability issues and claim also successful despite being 25 years out of time and awarded damages. [2020] EWHC 595 (QB).

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including club's refusal to negotiate. [2020] EWHC 670 (QB);

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Claims settled by Chelsea for "six figure" undisclosed sums shortly before trial after club took back conduct of case from its insurers.

Professional Negligence

James Counsell KC acts for claimants in professional negligence claims against a wide variety of professionals, including accountants, solicitors, barristers, financial advisers, banks and surveyors.

James acted (successfully) for the Claimants in the widely reported and commented upon case of *Thomas v Triodos Bank* [2017] EWHC 314 in which the court considered the extent of the duties owed by a bank to its customers when providing information about fixed interest rate loans.

He acted (now settled) for four claimants in a series of claims against a solicitor who conducted claims for damages by about 30 survivors of historical sex abuse, against their school, in which the solicitor is alleged to have advised them to settle at a significant undervalue without the evidence, which permitted him to make a proper assessment of settlement value.

Notable Professional Negligence cases

James, Mewse, Stoiles and Briggs v Deansgate 123 plc

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Dubai

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Dubai International Financial Centre
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Claims against historic abuse specialist solicitor for settling claims, which he was conducting for a group of claimants, at an undervalue and without obtaining sufficient evidence to advise on settlement.

Leading **Daniel Clarke** and **Patrick Tomison** (both Outer Temple), these four claims settled shortly before trial for sums which reflect the awards or settlements which should have been achieved less a discount to allow for the possibility they may have been lost.

Rowse v Nalders LLP

Claim against solicitor (and potentially barrister) for negligent advice as to conduct of claim to Financial Ombudsman Service arising out of complaint against home insurer for failing to compensate adequately after house fire. Failure to advise as to effect of accepting FOS award on prospects of being able to bring civil claim. Defended on the basis that solicitor relied on counsel's advice.

Pearson v Georgiou and Others

Failing to advise client adequately as to entries on planning register, leading to purchase of property blighted by proposed development.

Peryer v Arbuthnot Latham

One of a series of cases where James acted for individual claimants in claims against their financial advisers for the mis-selling of financial products, causing losses arising out of the financial difficulties of AIG during the financial crash of September 2008.

Thomas v Triodos Bank NV

Successfully acted for Claimant farming business in claim for breach of contract and misrepresentations in selling of fixed rate bank loans by bank [2017] EWHC 314.

Memberships

- **APIL**
- **ARDL**
- **PIBA**
- **PNBA**

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- Dubai International Finance Centre Courts
- Western Circuit

Languages

- Conversational French
- Basic Spanish

Publications

- Consultant Editor, Halsbury Laws, Vols 74 and 74A – Medical Professions
- A review of DSN v Blackpool FC and its implications for sexual abuse claims in English football for the website Law in Sport – April 2020
- Football club vicariously liable for historical sex abuse but a girls' boarding school is not (DSN v Blackpool Football Club Ltd and EXE v Governors of the Royal Naval School) – Case Analysis for Lexis PSL – March 2020

Appointments

- Advocacy trainer for the Academy of Law, Dubai

Recommendations

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Privacy Policy

Read James's [Privacy Policy](#).

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Outer Temple

Professional Negligence Update

James Counsell KC
Outer Temple Chambers

PROFESSIONAL NEGLIGENCE LAWYERS' ASSOCIATION

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1



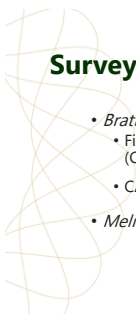
Recent important decisions

Claims against

- Surveyors/Valuers
- Solicitors
- Insurance brokers
- Structural engineers

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2



Surveyors/Valuers

- *Bratt v Jones*
 - First instance – HHJ Cawson KC (s/a J/HC) [2024] EWHC 631 (Ch)
 - CA: (Vos MR, Baker, Snowden LJ) [2025] 4 WLR 59
- *Melia v Tamlyn & Son Ltd* - HHJ Berkley (s/a J/HC) [2024] EWHC 3002 (Ch)

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3

Bratt v Jones – first instance

- Claim against jointly instructed valuation expert
- To be negligent
 - Expert had acted otherwise than would a respectable body of opinion
 - Valuation outside acceptable bracket
- So, four steps
 1. Determine objectively correct value
 2. Decide on % margin of error
 3. Dismiss if within
 4. If outside, apply Bolam
- If C failed to satisfy steps 1-3, often unnecessary to consider 4

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Bratt v Jones (CA)

- On appeal, D contended that ignoring need for C to prove step 4 was to reverse burden of proof
- CA (Vos MR, Baker, Snowden LJJ):
 - C needs to show not only that fell outside bracket but also was negligent within Bolam principle [47]
 - Not the law that, if fell outside bracket, legal burden of proof reversed. Burden remained on C. If falls outside, may be an indication that valuer had been negligent [46]
 - Here, C had fallen at the first hurdle. Failed to show outside the bracket [47]

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***Melia v Tamlyn* [2024] EWHC 3002 (Ch)**

- Claim against surveyor: poor advice re planning application
- Defences included that Cs had conspired with an employee of D to make a sham planning application
- Adverse inference drawn as a result of D's failure to call ex-employee even though no need to
- Claim succeeded but 50% reduction to reflect "moral turpitude" at final stage of *Manchester BS* test (legal responsibility test)

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Structural engineer

- *BDW Trading Ltd v URS Corporation Ltd* [2025] 2 WLR 1095
- Supreme Court (Leading judgment: Hamblen and Burrows JJSC)
 - Retrospective effect of s. 135, Building Safety Act 2022
 - Claim by developer against structural engineer
- Issues:
 - Duty of care
 - Voluntariness
 - Causation
 - Remoteness
 - Contribution

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BDW v URS

- Voluntariness – recoverability of losses incurred by BDW in carrying out repairs to defects
 - Argued outside scope of duty and/or too remote
- Decision:
 - No such thing as a principle which bars recoverability of voluntary losses as being outside duty of care or too remote [53-54]
 - Might be argued that broke chain of causation and/or was a failure to mitigate [55-61]
 - Questioned whether genuinely voluntary anyway [63-66]

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Solicitors

- *Miller v Irwin Mitchell* [2024] EWCA Civ 53 (Phillips, Andrews, Falk LJ)
- Duty of care where no retainer
- Relevance of level of client sophistication
 - Facts:
 - Claimant, injured on holiday, called for free tel advice
 - Claim 2 years later
 - Insurers declined cover
 - Trial – claim dismissed – no duty to advise her to notify travel operator, in circo where “client” was unsophisticated
 - CA – appeal dismissed – solicitor only offering high level advice

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Solicitors

- *Niprose Investments Ltd v Vincents Solicitors* [2024] EWHC 822 (HHJ Hodge KC (sitting as J/HCI))
 - Application to strike out by solicitors refused
 - Claim alleging failure to advise properly of risks of investing in development where no effective security to secure advance payments
 - Defence argued:
 - Retainer made clear not retained to advise on investment
 - C's pleading defective
 - No strike out: duty to advise depends not just on terms of retainer but also upon level of sophistication [70]
 - Would be wrong to strike out without giving C the opportunity to amend

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Costs - Niprose

- [2025] EWHC 2084 (Ch) HHJ Hodge KC again
 - Who should pay the costs of an unsuccessful strike out when only failed because C given permission to amend deficient case? Judge found:
 - Claim was originally fundamentally flawed
 - Would have failed but for amendments, which amounted to a comprehensive reformulation of claim
- Claimants to pay costs

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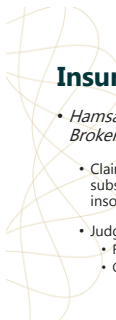
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Limitation – s 14A and 32

- *Lonsdale v Wedlake Bell* [2024] PNLR 21
 - S 14A where client believes mistake can be rectified
 - Knowledge of mistake not enough to start time running
 - Reasonable not to go elsewhere where C led to believe by D that problems could be sorted out
 - Also, continuing duty.
- *Al Sadik v Clyde & Co* [2024] EWHC 818 (Comm)
 - C's intended amendment not permitted and thought rest of claim would come good
 - Lawyers did not owe a duty to tell him that had left amendment too late

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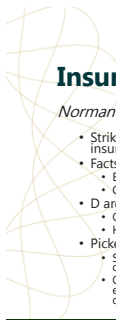


Insurance Brokers

- *Hamsard One Thousand and Forty-Three Ltd v AE Insurance Brokers Ltd* [2024] EWHC 262
 - Claim against broker alleging failures in obtaining a policy which was subsequently avoided on grounds of non-disclosure (of previous insolvencies of connected businesses)
- Judge held
 - Fusion had waived disclosure of this information and
 - Claim also failed on causation grounds

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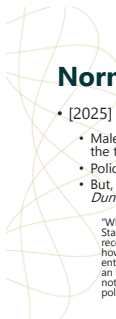
Insurance Brokers

Norman Hay PLC v Marsh Ltd [2024] EWHC 1039 (Comm)

- Strike out brought by brokers, where had been retained to provide global insurance for C's group of companies
- Facts:
 - Employee killed in car accident in US whilst driving a hire car
 - Cover did not include accidents in hire car
- D argued that
 - C required to establish that C had been liable to third party bringing claim
 - Hypothetical cover would have covered C
- Picken J rejected strike out:
 - Scope for inquiry as what would have happened, absent broker negligence (?loss of chance)
 - Claim does not necessarily fail if C cannot show that cover would have been effective (*Dalamd Ltd v Butterworth Spengler* [2019] PNLR 6). Can succeed if lost chance.

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Norman Hay PLC v Marsh Ltd (CA)

- [2025] EWCA Civ 58 Vos MR, Males and Birss LJJ
- Males LJ critical of lack of clarity of way case pleaded by C – did not specify the terms of the putative policy - assumed was a conventional liability policy
- Policy will only respond if Insured is actually liable
- But, agreeing with Picken J, different if claim was against broker, referring to *Dunbar v A&B Painters* [1986] 2 Lloyd's Rep 38 (Diplock LJ):

"What the employers have lost is the chance of recovering indemnity from the insurers. If Eagle Star would not have been entitled to repudiate liability in law, *cadit quaestio*; the damages recoverable would amount to a full indemnity. Even if they would have been entitled in law, however, to repudiate liability, it does not in my view follow that the employers would be entitled to no damages. The court must next consider in that event, what were the chances that an insurance company of the highest standing and reputation, such as Eagle Star, notwithstanding their strict legal rights, would, as a matter of business, have paid up under the policy."

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Melody Hadfield
4 New Square Chambers

“Solicitors' duties: how far do they extend?”

OUR PEOPLE

Melody Hadfield

CALL 2018



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Melody Hadfield's practice spans civil fraud, commercial litigation and arbitration, company, insolvency, insurance, professional negligence and sports.

She has significant expertise in contractual claims, and has acted for corporates and individuals in a wide range of contexts including the sale of goods, joint ventures, agency and commercial leases. Many of Melody's cases raise difficult questions of contractual interpretation and measure of damages. In one such case, she received judicial commendation for her "impressive, detailed and helpful written submission" and for presenting the claimant's case with "skill and fairness".

Melody is also experienced in claims involving allegations of misrepresentation or other serious wrongdoing. Notable instructions in this area include acting as junior counsel for the First Defendant in *The Public Institution for Social Security v Fahad Maziad Rajaan Al Rajaan and 37 others* (one of the largest fraud disputes ever heard by the Commercial Court) and representing a group of over 400 claimants in proceedings in the Commercial Court, arising out of their investment in student and holiday rental accommodation (*The Claimants Listed in Schedule 1 v Spence & Ors* (reported at [2021] EWHC 276 (Comm), [2023] EWHC 1 (Comm) and [2024] EWHC 2434 (Comm)).

Melody has worked on a number of cross-border disputes, and is assisted in this regard by her French language abilities; she has particular experience of reviewing French language banking and legal documents for litigation purposes.

Prior to coming to the Bar, Melody read law at Balliol College, University of Oxford. During her time there she was awarded the Brackenbury Exhibition, Brackenbury Scholarship and the Alan Rodger Prize in Roman Law. She also worked for a term as a legal research assistant. Following her undergraduate studies, Melody undertook the Bachelor of Civil Law (BCL) at Oxford in 2016, achieving distinctions in Philosophical Foundations of the Common Law and in a dissertation ("Objectivity and Subjectivity in the Law of Contract Damages").

Privacy Policy

Click here for a [Privacy Policy](#) for Melody Hadfield.

Expertise

Civil Fraud, Asset Recovery & Injunctive Relief

Civil fraud is an area of special interest for Melody, and she has particular experience of handling expert evidence in this context, including forensic accountancy evidence and property valuation evidence. She is well-versed in applications for freezing injunctions (including applications for permission to enforce freezing injunctions abroad), discharge applications, asset disclosure, applications to protect confidential information and contempt applications. She has acted in fraud claims raising bankruptcy and insolvency issues and questions of jurisdiction and governing law. Examples include:

- *The Public Institution for Social Security v Fahad Maziad Rajaan Al Rajaan and 37 others*: acting as junior counsel for the First Defendant in an USD 800 million civil fraud claim involving allegations of bribery and breach of fiduciary duty (spanning multiple jurisdictions and decades) in connection with investments made by the Kuwaiti social security fund.
- *The Claimants Listed in Schedule 1 v Spence & Ors* (reported at [2021] EWHC 276 (Comm), [2023] EWHC 1 (Comm) and [2024] EWHC 2434 (Comm)). Acting as junior counsel for a group of over 400 Claimants in proceedings in the Commercial Court, arising out of their investment in student and holiday rental accommodation. Claims were advanced in misrepresentation, unlawful means conspiracy and negligence, with a combined value in excess of £45 million.
- *Kendall & Ors v XL Insurance Company SE* (Circuit Commercial Court): acting for insurers of a dissolved law firm which is accused of making dishonest false representations concerning proposed investments in carbon credit schemes. Claims are advanced by a group of 20 claimants (former clients of the law firm) with a combined value of £1.5million.
- Advising liquidators on the merits of proposed claims against a company's former accountants for dishonest assistance of a director's breach of fiduciary duty and breach of trust.
- Acting for an optometry business in a claim against a senior employee for dishonest breach of fiduciary duty and breaches of his employment contract. The alleged breaches span a period of 6 years and comprise 4000 instances of falsifying data, undercharging acquaintances and making an unauthorised profit from the sale of products belonging to the business.
- Acting for the Second Defendant in an application to strike out a claim in conspiracy, where it was alleged that the Defendants had conspired to terminate the Claimant's company directorship and effect a transfer of his shareholding. The Second Defendant succeeded in securing an unless order pursuant to which the claim was subsequently struck out.
- *Abdulrida & Ors v Al Najar & Ors* [2021] EWHC 398 (Ch): acting as junior counsel for the Claimants in the trial of claims, worth in excess of £14 million, for personal and proprietary relief, arising out of a series of frauds perpetrated by a (now bankrupt) businessman against investors in property development schemes. The Claimants succeeded in persuading the court of a number of fraudulent misrepresentations by the First Defendant (including misrepresentations as to his intentions). The claims also raised issues regarding subrogation, restitution, proprietary estoppel, Quistclose trusts and constructive trusts.
- A proposed claim against auditors under section 213(2) of the Insolvency Act 1986 and for dishonest assistance of a breach of fiduciary duty by company directors, where it was alleged that the directors had caused the company to carry on business in a manner which defrauded HMRC.

Commercial Dispute Resolution

Melody benefits from substantial legal research experience and strong analytical skills, both of which equip her for tackling particularly complex commercial matters. She has extensive experience, in particular, with disputes raising questions in relation to the formation, interpretation and effect of contracts (including guarantees and consumer contracts) and deeds, as well as questions of mitigation and measure of loss. Her experience extends to enforcement matters and includes assisting with a claim to enforce a number of foreign judgments in a total sum in excess of USD 130 million, as well as appearing in the ADGM Courts in proceedings concerning the grant of a charging order over company shares. Melody particularly enjoys commercial work with an international dimension. She has produced notes and advices on jurisdiction and, in particular, on the location in which financial loss is suffered for the purposes of the tort gateway. Other highlights include:

- Arbitral proceedings (conducted in French language), worth in excess of USD 200 million, arising out of an agreement between two corporate entities to jointly pursue an oil exploration venture. The dispute raises complex questions concerning agency, disclosed principals, good faith and fiduciary obligations.
- Acting for a marketing agency in defence of a £1.6million claim, where it was alleged that the agency had exposed its client

to third party intellectual property claims.

- *F&T Terrix Limited v CBT Global Limited* [2021] EWHC 3379 (Comm). Sole counsel for the successful Claimant in Circuit Commercial Court proceedings arising out of the non-delivery of a shipment of nitrile gloves, raising issues of contractual interpretation, waiver and measure of damages.
- Advising on the enforceability of a personal guarantee contained in a tenancy agreement, where the intended guarantor had signed the tenancy agreement as director of the tenant company but not in his personal capacity.
- Advising on the merits of a proposed claim against a former real estate agent in relation to his receipt of an unauthorised secret commission.
- Acting as junior counsel in assessment of damages proceedings in the Chancery Division (for a claim worth in excess of £8 million) to determine the value of a shareholding in a higher education provider, involving argument about the appropriate valuation methodology and the application of a minority discount (settled).
- Acting as sole counsel for the successful public authority in a dispute over the existence and terms of a vehicle hire agreement, the effect of a no-oral modification clause and the applicable measure of damages.
- Assisting a provider of French holiday accommodation in connection with a customer's proposed claim for repudiatory breach of contract arising out of the cancellation of her reservation. The proposed claim raised interesting issues of contractual interpretation, frustration and measure of damages.
- Advising on the proper interpretation and effect of limitation and exclusion clauses in an agreement for the sale of fruit processing equipment.
- Acting for the successful commercial landlord in a fiercely contested summary judgment application in a dispute concerning the lease of business premises, raising questions about the effect of a no set off clause and the enforceability of a guarantee.
- Acting for a bank in multi-party possession proceedings. The proceedings included a subrogation claim and raised issues concerning limitation, mistake and unpaid vendors' liens.

Company & Insolvency

- Acting for the British Alpaca Society in its successful defence of a claim by a member who (1) sought to imply a term of good faith into the Society's articles of association and (2) alleged that this term had been breached by the manner in which disciplinary proceedings against him had been conducted.
- Obtaining reverse summary judgment for the Defendants (a company and its directors) in a claim made by a former company director. The former director complained of procedural errors in the manner in which his directorship had been suspended and subsequently terminated.
- Advising on the effect of a creditors' vote under paragraph 56(1) of Schedule B1 of the Insolvency Act 1986 and the Insolvency Rules 2016, and on the terms of the resulting settlement agreement.
- Acting as junior counsel in claims in the Chancery Division worth nearly €50 million, brought by administrators against a company secretary in relation to alleged conflicts of interest and a failure to provide accounting information to company directors (with a view to enabling the company to identify frauds perpetrated by one of its directors) (settled).

Insurance

Insurance is another area of particular interest to Melody, and she has worked on a range of insurance disputes, including coverage disputes and insurance brokers negligence claims. Melody has written and spoken on claims control clauses in insurance policies and contractual discretion in the insurance context. Her experience also includes:

- Acting as junior counsel in defence of claims in excess of £50 million brought by 176 claimants against insurers of an insolvent accountancy practice.
- Junior counsel for insurance brokers in a policyholder's £8.2million claim against insurers and brokers to recover losses allegedly sustained following a fire at a hotel in Scotland. The proceedings raise issues concerning misrepresentation/non-disclosure and waiver.
- Advising on the merits of a claim for the recovery of sums paid under a home insurance policy, raising issues concerning misrepresentation, waiver and affirmation.
- A claim by a former rugby player under a personal accident and illness insurance policy, insuring against permanent total disablement.
- Acting in proceedings, brought under the Third Parties (Rights Against Insurers) Act 2010, against the public liability insurers of a company in liquidation, in relation to the installation of a CWI System at a residential property, raising scope

of coverage issues.

- Acting for insurers in the defence of a claim under an all risks on portable property business insurance policy, arising out of the theft of a number of tools stored in a van.

Professional Liability, Disciplinary and Regulatory

Melody acts in claims against a broad range of professionals, including solicitors, financial advisers, surveyors, accountants and auditors. She has particular experience with claims against solicitors regarding financial remedy proceedings and claims arising in the conveyancing context, including claims relating to boundary issues, planning permission, rent review, service charge terms and land registry restrictions. Melody has acted in a number of disputes involving multiple parties and additional claims, as well as negligence claims arising against a backdrop of (allegedly) fraudulent transactions. Examples include:

- *Ashraf v Lester Dominic Solicitors & Ors* [2022] EWHC 621 (Ch). An appeal in the High Court in a claim against two firms of solicitors (along with several other parties) arising in connection with alleged conveyancing fraud. The claim raised a novel issue concerning duties owed by solicitors to non-clients.
- Acting as junior counsel for a firm of solicitors in relation to an investigation by the Administrative Court of a breach of a judgment embargo, where the court considered whether to institute contempt proceedings under CPR 81.6(1).
- *Kingsley Napley LLP v Harris* [2021] EWHC 901 (QB). Acting as junior counsel for solicitors, who successfully resisted a substantial counterclaim brought by the Defendant in relation to the firm's conduct of financial remedy proceedings and other matters.
- Sole counsel defending a £1.1 million claim brought by the Claimant against two corporate entities and a director of both entities, alleging negligent advice and negligent misstatement in relation to a failed investment; raising issues concerning directors' duties, agency and authority.
- Sole counsel for a firm of solicitors in High Court proceedings, where the claimant alleged that the defendant solicitors had failed to advise her on the effect of an overage agreement.
- An application in the Queen's Bench Division, regarding non-compliance with an order for disclosure, raising issues concerning the interpretation of the order and principles governing solicitors' liens.
- Claims by a bridging finance lender against a valuation panel management company and a surveyor, alleging negligence and breach of contract in respect of the valuation of a residential property. The proceedings raised issues regarding the identity of contracting parties and terms of contract.
- Acting for a senior partner of a law firm in connection with an investigation by the SRA in respect of disclosure issues which arose in the course of a lengthy group litigation action.
- Assisting a partner in a firm of accountants in connection with an investigation by the ICAEW relating to alleged conflicts of interest, bias and a breach of anti-money laundering regulations.
- Proceedings brought by a show jumping trainer against a farrier for damages in excess of £2 million, arising out of the negligent diagnosis and treatment of an international show jumping horse.
- Acting for a firm of solicitors in defence of claims brought in contract and in unjust enrichment, arising out of their conduct of employment tribunal proceedings brought by the claimant against his employer, an NHS trust, for constructive dismissal.

Sports

Melody's experience extends to a range of sporting disputes, with a particular focus on contractual claims between football agents/intermediaries, players and clubs. Examples include:

- Acting for a football player in proposed proceedings against his club for breach of contract (comprising a failure to notify the player of loan and transfer offers from another club).
- Acting for an FA intermediary in a claim (worth in excess of £2 million) against a Premier League player and a sports agency for breach of an exclusive agency agreement.
- Advising on contract formation, incorporation of terms, onerous clauses and restraint of trade clauses in relation to football contracts.
- Acting as junior counsel for a football player in defence of arbitral proceedings brought by an intermediary. The claim raised issues concerning the law of mistake, non est factum and contractual interpretation.
- Advising a canoeist on the merits of a proposed appeal in a selection dispute.
- Acting as junior counsel for a sprinter in relation to a preliminary investigation by UK Anti-Doping into the alleged

presence of dorzolamide in the sprinter's urine sample – securing an exceptional decision by UKAD to refrain from charging the athlete with an Anti-Doping Rule Violation.

Qualifications

EDUCATION

BA (Hons) Jurisprudence, BCL (Balliol College, University of Oxford); BPTC (BPP University)

PUBLICATIONS

Co-authored with J Goudkamp, "A Tour of the Tort of Negligence" (2016) 32 Professional Negligence 137

LANGUAGES

French (Intermediate)

Solicitors' Duties: How Far Do They Extend?

MELODY HADFIELD

16 OCTOBER 2025

1

Three limiting principles

Is the advice reasonably incidental to the retainer?

The client's experience

Legal vs non-legal issues

2

"Reasonably incidental duties"

• **Step 1:** What are the express terms of the retainer?

• **Step 2:** Is the advice reasonably incidental to the retainer?

- Information the solicitor has obtained during the retainer which may be relevant to the client's interests (e.g., *Gabriel v Little* [2013] EWCA Civ 1513, [73]).
- Risks which come to the solicitor's attention (or which should have come to their attention) whilst carrying out the tasks they have been instructed to carry out (*Lyons v Fox Williams LLP* [2018] EWCA Civ 2347, [41] - [42]).

3

Credit Lyonnais SA v Russell Jones & Walker (A Firm)
[2003] PNLR 2

- Claimant wanted to exercise a break clause
- Required to serve 6 months' written notice and pay a sum of £11,500
- Defendant instructed to (a) contact landlord to see if landlord would be prepared to extend notice period and (b) serve notice of termination on time.



4 NEW SQUARE

4

4

Credit Lyonnais SA v Russell Jones & Walker (A Firm)
[2003] PNLR 2

- No duty to expend time and effort on matters outside retainer.
- But: *"if, in the course of doing that for which he is retained, he becomes aware of a risk or potential risk to the client, it is his duty to inform the client"* (para [28]).
- Instruction to contact landlord did not require competent solicitor to investigate terms of lease (para [29] - [30]).
- Carrying out instruction to serve notice did require a review of the lease.
- On reading the lease, the Defendant ought to have become aware of requirement to pay termination sum and informed the Claimant of this requirement (para [33]).

4 NEW SQUARE

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Spire Property Developments LLP v Withers LLP [2022]
EWCA Civ 970

"I should add that, in the event that there is a place for the imposition of a duty to advise on "reasonably incidental" matters in a non-contractual context such as the present, the question of what remedies the Developers might have against UKPN in relation to the HVCs was not a matter "reasonably incidental" to the matters for which Withers assumed responsibility. Ignoring the extent of the burden involved in researching and giving such advice (which may look relatively straightforward with the benefit of hindsight, but would not necessarily have appeared so in January 2014, not least given the factual uncertainties), Withers' assumed duty related to the circumstances surrounding the non-discovery of the HVCs in 2012, and not potential avenues of redress against UKPN going forward."

(para [100])

4 NEW SQUARE

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“Reasonably incidental duties” and limited retainers



• *Minkin v Landsberg (trading as Barnett Family Law)* [2015] EWCA Civ 1152 - limited retainer.

• *Lewis v Cunningtons Solicitors* [2023] EWHC 822 (KB) – retainer letter stated that the retainer was “in relation to [the claimant’s] divorce and financial matters” (para [216]).

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7

7

The Client’s Experience

“An experienced businessman will not wish to pay for being told that which he/she already knows... An inexperienced client will expect to be warned of risks which are (or should be) apparent to the solicitor but not to the client.”

(*Minkin*, [38])

“If a solicitor is instructed to prepare all the documentation needed for the sale or purchase of a house, it is no part of his duty to pursue a claim by the client for unfair dismissal. But if he finds unusual covenants or planning restrictions, it may indeed be his duty to warn of the risks and dangers of buying the house at all, notwithstanding that the client has made up his mind and is not seeking advice about that. I say only that this may be his duty, because the precise scope of that duty will depend inter alia upon the extent to which the client appears to need advice. An inexperienced client will need and will be entitled to expect the solicitor to take a much broader view of the scope of his retainer and of his duties than will be the case with an experienced client.”

(*Carradine Properties Ltd v D) Freeman & Co* [1955-95] P.N.L.R. 219, 226)

8

Anna Christie v Mary Ward Legal Centre [2025] EWHC 330 (KB)

- 2012 - the local authority obtained a judgment against the Claimant for service charge arrears.
- Notice of forfeiture issued when she failed to pay the judgment debt, followed by 2 sets of possession proceedings.
- Claimant sought advice from the legal centre.
- Claimant made numerous allegations of negligence against the legal centre and the barrister instructed by the legal centre. One of the allegations was that they had failed to ask the Claimant whether the local authority had sent her ground rent invoices after serving the forfeiture notice.



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9

Anna Christie v Mary Ward Legal Centre [2025] EWHC 330 (KB)

“She was not the classic inexperienced client Jackson LJ may have contemplated in *Minkin*. Indeed, the lawyers at D1 knew she was experienced in litigation on service charges. They had to deal with many concerns from C - Ms Holman about the consent order in January 2013 and Ms Talboys about the service charge in April. Yet at no point did C raise the existence of rent demands, even when complaining about the 2013 service charge. They could assume C would be forthcoming with information and her views - they had to deal with the robust expression of those views regularly. Yet C never mentioned receiving rent invoices, so they were not put on enquiry.”

(para [138])

10

Legal vs non-legal matters

Advice which falls within the scope of another professional discipline

Value judgments which the client is equally (if not better) equipped to make

11

Issues within the scope of other professional disciplines



- **Valuation** (see *County Personnel (Employment Agency) v Alan R Pulver & Co* [1987 1 WLR 916, p923]).
- **Forecasting changes in interest rates and property prices** (see *Investors Compensation Scheme Ltd v West Bromwich Building Society (No.2)* [1999] Lloyd's Rep. P.N. 496, p518).

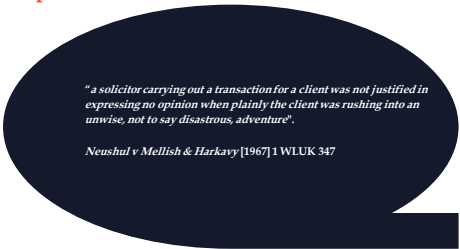
12

Value judgments which the client is equally well-placed to make

- *Lennon v Englefield*[2021] EWHC 1473 (QB)
- *Pickersgill v Riley* [2004] UKPC 14
- *Reeves v Thrings & Long* [1996] PNLR 265
- *Luffeorm Ltd v Kitsons LLP*[2015] EWHC B10

13

The Exception



14

Niprose Investments Ltd v Vincents Solicitors Ltd [2024] EWHC 801 (Ch) and [2025] EWHC 14 (Ch)

- Defendant accepted that if a client, particularly an inexperienced one, is clearly rushing into an "unwise, not to say disastrous, venture" a solicitor may be under a duty to advise the client on whether (legal considerations aside) the transaction is a prudent one ([2024] EWHC 801 (Ch),[34]).
- Court held that the Claimants had failed to plead "any particular characteristics, or vulnerabilities, of individual claimants" ([2024] EWHC 801 (Ch), [69]) or features of the scheme that made the scheme particularly unusual ([2024] EWHC 801 (Ch), [73]).
- Court considered nonetheless that "there may be some traction" in the Claimants' allegations of breach of duty. Claimants therefore afforded an opportunity to amend their statements of case ([2024] EWHC 801 (Ch), [76]).

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Piers Elliott
Managing Director
Henderson & Jones

*“Purchasing claims
– Practice and Procedure”*



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Managing Director

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Piers is a commercial litigator with over 15 years' experience of complex and high-profile disputes. Piers has a broad commercial practice with particular expertise in advising on financial services and insolvency disputes.

Piers joined Henderson & Jones in September 2019 from Freshfields where Piers spent seven years as a senior associate in the dispute resolution team. During his time at Freshfields, Piers spent six months on secondment to the Litigation and Regulatory Enforcement team at HSBC. Prior to joining Freshfields, Piers spent five years at Mayer Brown.

Piers is admitted as a solicitor in England and Wales. He has a law degree from the University of Birmingham.



1



What we do

- H&J is a litigation investment company that purchases litigation and arbitration claims
- Types of claims:
 - Insolvency - TUVs, Preferences, Misfeasance, Void Dispositions etc
 - Breach of Contract
 - Professional Negligence
 - Shareholder Disputes
 - Insurance Disputes
 - Contentious Trusts
 - Competition Law
- Claims range in size from £50,000 to +£100m
- Current running over 100 active purchased cases.
- Over 100 cases under review

2

2



How Assignment Works

- H&J takes an assignment of claims and becomes the named Claimant
- We meet all costs associated with the claims and provide our Assignors with an indemnity to protect against any adverse costs risk
- We instruct solicitors and barristers to act for us and progress the claims
- Assignments typically structured as an upfront payment plus deferred and contingent consideration payable upon recovery.
- Enables claims to be pursued without cost, risk or hassle.



3

Assignment v Funding

- Unlike traditional funders, H&J's return sits parri passu with the return to our assignors
- Our interests are 100% aligned in maximising returns
- Assignment model permits us to invest in cases that involve more risk
- Happy to consider an early stage investment - i.e. before significant investigations / costs
- Experienced in-house team of expert litigators with a track record of realisations
- We become the day-to-day client; freeing up assignors' management time



4

What we look for

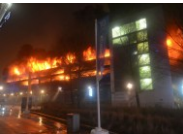
- No application form or checklist
- What documents best explain the case?
- Need to assess:
 - Merits
 - Quantum
 - Prospects of Recovery
- Typical documentation
 - Correspondence
 - Pleadings
 - Legal Advice
 - Valuation / Expert Advice



5

Examples of our experience

- Audit negligence claim arising from a material stock discrepancy discovered upon insolvency.
- Solicitor negligence claim against a firm of solicitors who allowed limitation deadlines to expire.
- Claim against insurance brokers for negligent advice provided in the scope of an unsuitable property damage policy.
- Claim against risk management advisory firm who failed to identify material risks at a bio digestion plant which resulted in an explosion causing significant damage.



6

Questions?

Please connect with me:



Piers Elliott
Managing Director



7

7



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8



Matthew Pascall
Legal Director
Temple Legal Protection

“ATE Insurance update”

Matthew Pascall

Legal Director Head of Commercial



Matthew was called to the Bar in 1984 and joined Guildford Chambers two years later. Spending more than 30 years in practice there, he was listed as a Legal 500 Tier One barrister.

He joined the commercial team at Temple Legal Protection as Senior Underwriting Manager in 2017.

Matthew was appointed to Temple's Board in December 2022 as Legal Director and Head of Commercial.

His knowledge of the commercial legal sector and litigation practice is invaluable to the business and our clients, providing specialist experience to lead the commercial litigation insurance team.

ATE Up-Date

Security for Costs
Negligent Civil Servants
Social Inflation
(and a Belgian Goat)

Matthew Pascall
Legal Director & Head of
Commercial

Temple Legal Protection Limited



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1

Security For Costs

Lloyds Developments Limited v Accor Hotelservices UK Limited [2025]
EWHC 2011 (TCC)

D sought security for costs.

- 6 iterations before C asked the court to approve the 7th as adequate security.
- Issue:
- Extent to which the proposed AAE allowed the Insurer to void the policy in the case of fraud on the part of anyone other than the "Policyholder and/or Claimant..." e.g. principals or agents.

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Security For Costs

- The relevant clause:
 - ' any claim made against this Policy will be honoured in full irrespective of:
 - iii) any fraud, dishonesty, deceit, duress, inducement or undue influence whatsoever by the Policyholder and/or the Claimant including, without limitation, in making or failing to make any representation or disclosure or giving or offering any bribe or benefit.'

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Security For Costs

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C resisted the proposed change on the basis it was simply unnecessary.

Court's view:

"..., it may well be that the concerns raised... are unrealistic both factually and legally, but equally there is little rational basis for the exclusion of wording which puts the matter beyond doubt, even if that wording is, upon a strict analysis, unnecessary."

It thus approved an amended clause that replaced "... by the Policyholder or the Claimant" with "... by or affecting any person including, ..."

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4

Negligent Civil Servants

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Peter Marples & Others v Secretary of State

- Claimants own all the shares in "AAA"
- AAA provides training for apprentices and is largely funded by the former the Education Skills Funding Agency - D
- The funding is provided under a contract between AAA and D
- Cs wish to sell their AAA shares to TCP

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Negligent Civil Servants

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- The funding agreement required AAA to notify D "... if there is..." a change of owner.
- D has the right to terminate the funding agreement if D considers in its "absolute" discretion that the change in ownership of the funded business would prejudice the ability of the business (AAA) to deliver the services specified in the agreement.
- No apparent requirement to notify D if there is to be a change of owner.
- C tells D of its intention to sell the business.

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Negligent Civil Servants

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- Having been told of Cs' intention to sell, D tells Cs that it does not agree with the proposed sale. Cs tell the buyer and the buyer withdraws its offer to buy the shares.
- The claim in negligence:
- D owed a duty of care to Cs as shareholders in AAA
- The duty was not to take decisions under the funding agreement arbitrarily, capriciously, irrationally or unreasonably.

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Negligent Civil Servants?

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- Cs argue that the decision was capricious and arbitrary
- The decision caused the loss of the opportunity of selling the shares.
- D denies:
 - The existence of the duty
 - Breach
 - Causation.

Added minor complication: In fact, Cs owed shares in a holding company that, in turn, owed shares in AAA. To whom might any duty have been owed?

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Negligent Civil Servants

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In my view a duty was owed but, as pleaded, limited to the need not to act capriciously, arbitrarily etc.

Breach...

We will have to see what the judge made of the evidence and the reasoning behind the decision taken by D.

Would you have insured the case?

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9

Social Inflation



What is it?

- Rising cost of litigation to insurers that triggers increased cost of insurance.
- What drives this?
- Us?
- No - it's the Americans (or is it?)
- Why worry?
- Re-insuring ATE in funded cases - a significant problem.

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10

A Belgian Goat



A chance to give ChatGPT a whirl and discover the joys of Book 6 of the Belgian Civil Code:

An 11 year old schoolboy is on a supervised school trip on a farm. There are goats! A goat escapes from its enclosure because a teacher opens a gate to let the children get closer to the goats. The escaped goat hides under an uncoupled trailer and gets trapped under it. The 11 year old schoolboy and his friends manage to push the trailer in an effort to free the trapped goat. The goat escapes but the trailer gathers momentum and heads out of the farm and onto a road along which a 17 year old is travelling on a moped, the maximum speed of which is 25km/h. In an act of gross negligence the moped rider tries to pass the free-wheeling trailer and in so doing hits an unfenced electricity sub-station, which explodes injuring diners in a restaurant located immediately adjacent to the unfenced electricity sun-station.

Discuss!

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11



Helen Pugh
Outer Temple Chambers

“Digital Assets and the Hundred Acre Wood”

Helen Pugh

Year of Call: 2008

Direct Access: Yes

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	0207 353 6381



Helen specialises in general **commercial litigation**, civil fraud, **contentious insolvency and company law issues**, and **professional negligence**.

Helen has acted in several leading and high-profile contempt cases in recent years, with a particular focus on contempt proceedings arising out of breaches of freezing orders, proprietary injunctions or ancillary disclosure orders.

Her practice has a strong **international** element with expertise in **jurisdictional disputes** and conflict of law issues, including as they arise at an interim stage in applications for worldwide freezing orders and service out applications or on the substantive claim, and in the cross-border insolvency context.

Helen is a member of Chancery Bar Association, Commercial Law Bar Association, Thought Leaders 4 Fraud, Insolvency, Recovery and Enforcement and the Female Fraud Forum.

Helen is also on the committees of the Tech Disputes Network, the pre-eminent forum for legal professionals working in the field of crypto, digital assets and other tech disputes. She is also an elected member of the Female Fraud Forum's Social sub-committee.

Areas of Expertise

Commercial & Civil Fraud

Helen has a heavyweight and diverse commercial and civil fraud practice, much of which has a cross-border element. She is frequently instructed in cases requiring urgent injunctive and ancillary relief and she has been instructed in many of the leading cases in contempt of court arising out of breach of injunctions and disclosure orders. Helen has a particular interest in disputes involving cryptocurrencies and digital assets and is one of a small number at the Bar with case experience in this area.

Helen's substantial practice encompasses a wide range of typical commercial and commercial chancery cases ranging from breach of SPA or asset purchase agreements, agency and other fiduciary intermediary disputes, supplier and distributorship

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disputes, platform usage disputes and sponsorship contract disputes, to misappropriation, deceit, conspiracy and breach of fiduciary duty cases.

Helen is particularly sought-after in cases raising multidisciplinary issues due to her expertise and ability in cross-over areas – notably in professional negligence, company law and insolvency.

Helen is ranked as a leading junior in Commercial Litigation, Civil Fraud and Crypto Disputes in Legal 500. Quotes include:

"She is incredibly bright and provides comprehensive advice."

"She stands out for her knowledge and ability to think outside of the box. She is incredibly personable."

"Helen has a rigorous, academic approach, is on top of the key legal developments and knows the players in the field, and is delightful to work with."

"A tenacious, confident advocate who is incredibly switched on. Clients appreciate Helen's determination, and her commitment to their case."

"She is unflappable and has the advocacy touch and tactical judgement of a barrister with much more experience."

Helen is a contributor to the current edition of Millington and Sutherland Williams on Proceeds of Crime on the issue of the interaction of proceeds of crime legislation and the insolvency regime. She also frequently contributes to the leading industry journals.

Prior to practise at the Bar, Helen taught commercial contract classes at the London School of Economics.

Notable Commercial & Civil Fraud cases

Acting for the first appellant in the Court of Appeal on the issue of the interrelationship between alternative service orders in the underlying proceedings and the mandated service provisions under Part 81 in contempt proceedings (sole counsel) ([Commercial Bank of Dubai SC & Ors v Al Sari \[2024\] EWCA Civ 643](#)).

An asset recovery claim to c£500m in bitcoin raising issues of proprietary relief, applicable law, and the interrelation between civil recovery and confiscation proceedings under the proceeds of crime act and the insolvency jurisdiction of the English court.

Acting for a HNW claimant in a claim against a trading platform for wrongful termination of trades.

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Acting for a defendant in contempt proceedings arising out of a breach of disclosure obligations ancillary to a proprietary injunction (led by James Counsell KC) ([Isbilen v Turk \[2024\] EWHC 565 \(Ch\)](#) and [Isliben v Turk \[2024\] EWCA Civ 568](#)).

A multi-million pound bitcoin fraud against foreign-domiciled parties identified as potential recipients of the misappropriated bitcoin followed a disputed tracing exercise by blockchain analysis experts (sole counsel) ([Ellis v Digit Europe Ltd](#)).

An application for an interim injunction to 'hold the ring' pending a claim based on wrongful termination of a contract of supply of goods and services (sole counsel).

A claim for repayment of a series of loans made to the defendant raising a variety of issues including the meaning of delivery of a deed, the scope of a purported settlement and limitation (sole counsel).

A High Court £3m claim in unlawful means conspiracy, dishonest assistance, and the tort of procuring breaches of contract arising out of an alleged property investment fraud (sole counsel).

Advising various depositors upon possible causes of action in relation to the collapse of the FTX cryptocurrency exchange (sole counsel).

A £5m claim by a US company against an English company with high profile and high value IP rights concerning breach of warranty, breach of fiduciary duty and the fraudulent dissipation of monies. (led by Aidan Casey KC)

A multi-party fraud action said to arise out of the misappropriation of luxury cars worth c£1.5m at a prominent London hotel and their unauthorised transfer to Switzerland (sole counsel).

A summary judgment matter involving a high-net worth individual concerning a £3.7m loan and issues of mistake, illegality, misrepresentation, res judicata and abuse of process. (led by Jonathan Seitler KC) ([Baxendale-Walker v APL Management Ltd](#)).

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Company

Helen has substantial experience in the full spectrum of contentious company law matters. Helen's complementary expertise in insolvency, including breach of duty & misfeasance claims, and her civil fraud work is a particular advantage to clients looking for clear, strategic advice in claims where wrongdoing by shareholders or directors is suspected.

Helen has a significant practice in shareholder disputes across a range of sectors and industries. These range from disputes between equal shareholders in a number of property development SPVs, to minority shareholder rights in substantial groups of companies to multi-faced litigation between parties which include, as one part, an unfair prejudice matter. In addition she has been instructed on a number of derivative action matters, including *McGaughey v USSL* which was the first reported case of an attempt to bring an ESG (multi)derivative action.

Helen's expertise in crypto and digital asset disputes makes her an excellent choice for company law issues arising in the tech sector.

Notable Company cases

Acted for the successful respondent before Leech J and subsequently the Court of Appeal on an application for permission to pursue a multiple derivative action against the directors of a corporate trustee of a pension scheme on grounds including that the directors had failed to prepare a plan to divest the scheme of its investments in fossil fuels (led by [Andrew Short KC](#)) (*McGaughey & anr v Universities Superannuation Scheme Ltd*).

Acting for a majority shareholder in both a trading company and a property Holdco in an unfair prejudice petition raising issues of diversion of profits to another company and sales at undervalues.

Junior counsel in the leading Supreme Court case on de facto directors (led by Aidan Casey and Peter Knox KC) ([Holland v Revenue and Customers Commissioners \(Re. Paycheck Services 3 Ltd\)](#))).

An unfair prejudice petition and counter-petition in relation to a series of connected property development companies raising issues of fairness/ justification and valuation.

Advising a director upon his potential liabilities in the event of an unsuccessful challenge to HMRC's tax assessment arising out of the company's adoption of an employee benefit tax scheme.

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Insolvency

Helen is a sought-after junior in the full range of insolvency litigation. Her experience includes directors' disqualification proceedings, misfeasance/breach of fiduciary duty claims, unlawful distribution claims, antecedent transaction challenges, and beneficial ownership disputes, as well as wrongful and fraudulent trading. She regularly appears in specialist proceedings under the Insolvency Act such as petitions of overseas companies, disputed petitions, admin extensions, and applications for directions by insolvency practitioners.

Whilst the vast majority of Helen's practice is in the field of corporate insolvency, she also acts for and against HNW individuals and high profile persons facing personal insolvency or claims arising out of personal insolvency. Helen's practice includes annulment applications, suspension applications and applications for examinations.

Her clients include many of the well-known insolvency practitioners and a market leading insolvency litigation funder, but she also works regularly on the 'director-side' or for individuals facing insolvency, challenging insolvency proceedings or seeking to resist or overturn decisions taken by insolvency practitioners.

Helen is ranked as a leading junior in Insolvency in the Legal 500. Client quotes include:

"Very technically strong."

"She is incredibly bright and provides comprehensive advice."

"Very thorough and commercial. Quickly gets the issues and provides clear focus."

"An enviable ability to grasp large amounts of information quickly and draft claims logically, thoroughly and with precision."

Notable Insolvency cases

A successful application to serve a winding up petition out of the jurisdiction on an overseas company in respect of debts and on the just and equitable ground, and thereafter appearing on the successful petition ([Quartermain Ltd v Blackmore Global PCC Ltd \[2022\] EWHC 692 \(Ch\)](#), [\[2022\] All ER \(D\) 112 \(Mar\)](#)).

Acting for the joint liquidators of a cryptocurrency exchange in members' voluntary liquidation in an application for directions in relation to the novation of customer contracts depositing cryptocurrencies with the company (sole counsel) ([Coinfloor Ltd In Members Voluntary Liquidation, In the Matter Of \[2024\] EWHC 2767 \(Ch\)](#)).

Advising and representing a group of creditors in an application to wind up an overseas company involved in the Lantian

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Gerui Fraud, raising issues of the overlap with civil recovery proceedings and the creditors' claims to c£500m bitcoin held by the company .

Advising a liquidator upon digital assets and cryptocurrency issues in a corporate insolvency.

A complex unlawful dividend and misfeasance claim against a former director of an insolvent company raising issues which include a director's responsibility where a company falls victim to a fraud.

Acting for liquidators of a company which had engaged in a ponzi land-banking fraud in the US targeting UK investors.

Holland v Revenue and Customers Commissioners (Re. Paycheck Services 3 Ltd)

Junior counsel in the leading Supreme Court case on de facto directors (led by Aidan Casey and Peter Knox KC).

Representing a formerly high-net worth individual in successfully resisting a trustee's application to suspend his bankruptcy discharge.

Advising in conjunction with local lawyers on winding up proceedings in the Isle of Man on the grounds of a petition debt based on an Indian arbitration award undergoing challenge in the Delhi Supreme Court.

Acting for a liquidator pursuing claims against directors of a company which went insolvent as a result of a fine imposed by the company's regulator.

Advising a director upon his potential liabilities in the event of an unsuccessful challenge to HMRC's tax assessment arising out of the company's adoption of an employee benefit tax scheme.

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Banking & Finance

Helen undertakes a range of banking and finance work as part of her broad commercial practice. She is often instructed in guarantee disputes, on questions of priorities and security matters, on unfair relationship cases and in other creditor matters. Helen's cases often involve cross-over issues in insolvency, civil fraud and professional negligence. In particular, she has been instructed in a number of professional negligence cases against financial and insurance intermediaries.

Helen is regularly invited to speak on topics related to banking and finance, including Quincecare claims and cryptocurrency. She has been published on a range of topics in the Journal of International Banking and Financial Law and other leading publication.

Notable Banking & Finance cases

Advising a finance company upon the enforceability of its loan agreement and associated guarantees against husband and wife co-directors. The case raises a number of issues not atypical in cases where the debtor company is a family-run business, including questions of authority and forgery.

Acting for a high profile, high net worth individual in an action to recover a significant loan raising issues including the validity of a deed, promissory estoppel and limitation.

Advising a high net worth foreign national in connection with a claim against his former solicitors arising out of multi-million losses due to issues relating to deeds of priority and the registration of charges between competing lenders, and a claim against another lenders.

Advising the former spouse of a company director upon the validity and enforceability of an all-monies guarantee provided to an institutional lender to secure her former spouse's failing business.

Acting for the founding shareholders of a company in a dispute against private equity investors arising out of the investment agreement and subsequent conduct of the PE firm.

Acting for a client in an action for breach of MCOB rules in a typical 'interest-only' mortgage mis-selling case.

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Acting for an individual in an unfair relationship case arising out of the advancement of loans by connected parties.

Professional Negligence

Helen has extensive experience across the breadth of professional negligence actions including firms of solicitors, surveyors and valuers, insurance and other brokers or intermediaries, and accountants. Helen is regularly named in the Professional Negligence category of Legal 500 as a leading junior in this area "Helen has a fantastic grasp of the intricacies of professional negligence, and an approachable and understanding demeanour which helps to build a quick rapport with clients."

Notable Professional Negligence cases

Advising a high net worth foreign national in connection with a claim against his former solicitors arising out of multi-million losses due to issues relating to deeds of priority and the registration of charges between competing lenders, and a claim against another lenders.

A commercial court trial against a city law firm arising out of negligent Mexican tax advice (led by William Godwin KC) ([Symrise AG v Baker & McKenzie](#)).

A claim against an accountant for various breaches of duty, including a failure to implement a tax efficient members' voluntary liquidation in advance of an adverse change in entrepreneur's relief.

A claim against a mortgage broker for mis-selling an interest only mortgage in breach of the then applicable MCOB rules.

Advising a group of claimants who were victims of a student accommodation property fraud in relation to professional negligence by their former conveyancing solicitors and surveyor.

Acting for a shareholder and group of companies in a claim against a well-known US solicitors' firm for advisory failures in connection with a multi-million pound asset purchase agreement.

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Memberships

- **COMBAR** (Commercial Bar Association)
- **ChBA** (Chancery Bar Association)
- **PNBA** (Professional Negligence Bar Association)
- Female Fraud Forum
- **Tech Disputes Network**
- CFAAR (Crypto Fraud and Asset Recovery)
- **R3** (the Association of Business Recovery Professionals)
- Thought4Leaders FIRE Community Member

Languages

- Basic – conversational German and French

Publications

In addition to writing for chambers' own publications, Helen regularly contributes to a range of external journals and periodicals including the Journal of International Banking and Finance Law, the Journal of Corporate Rescue and Insolvency, the New Law Journal and others. Helen is also a contributor to the insolvent defendants chapter in the upcoming edition of Millington and Sutherland Williams on the Proceeds of Crime.

Helen has published various articles. Recent articles include:

- **Crypto fraud and the bona fide purchaser for value defence**, Journal of Banking and Finance Law (JIBFL, 2023)
- **No green light (yet) for climate actions – Andrew Short KC & Helen Pugh examine the high hurdles still faced by claimants when bringing climate-related derivative actions** (New Law Journal 2022)
- **Knowing receipt and the proprietary base** (JIBFL 2021)
- **Reflective Loss and the Applicable Law Conundrum**, Journal of Banking and Finance Law (JIBFL 2020)
- **Breathing Space: The Impact of a More Consensual Approach**, Journal of Corporate Rescue and Insolvency (CRI 2020)
- **'A New Tool for Minority Shareholders?'**, an article on the decision in *In re Core VCT plc* (in liquidation) in the Journal of Corporate Rescue and Insolvency (CRI 2019)
- **Unexplained Wealth Orders – Whose cash is it anyway?**, the New Law Journal (NLJ 2019)
- **Russian Litigation in London: a two-part series of articles** the New Law Journal (NLJ 2019)
- **Restoring a company to members' voluntary liquidation with the appointment of new liquidators**, Journal of Corporate Rescue and Insolvency (CRI 2019)

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- **A Collective Sigh of Relief: Global Corporate Ltd v Hale on Appeal**, Journal of Corporate Rescue and Insolvency (CRI 2019)
- **No ifs, no buts. Cost pressures & solicitors' negligence are no excuse for cutting corners**, the New Law Journal (NLJ 2015)

Recommendations



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Digital Assets and the 100 Acre Wood

How digital assets will impact professional negligence claims and what you need to do about it

Helen Pugh (helen.pugh@outertemple.com)

Outer Temple Chambers

1

1



Blockchain		Technology – a ledger of transactions held simultaneously by multiple nodes on a network.
Ethereum		A decentralised blockchain platform known for its smart contract functionality and host of Ether (ETH).
Solana		A high speed blockchain with low transaction costs.
Bitcoin		The original decentralised blockchain ledger and host of Bitcoin currency.

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Digital Asset	Any item existing in digital format, holding value and which can be owned and transferred e.g. photos, e-books, carbon credits and cryptocurrencies.
NFT	A digital collectible which uses the same blockchain technology as cryptocurrencies.
Cryptocurrency	A type of digital asset used as a store of value or medium of exchange
Bitcoin	The original cryptocurrency
Stablecoin	A cryptocurrency which aims to maintain a fixed, unchanging market value pegged to another currency or commodity or financial instrument

3

3





Address	A unique alphanumeric identifier for a wallet for receiving and sending funds. 1A1zP1eP5QGefi2DMPTfTL5SLmv7DwvNa 0x742d35Cc6634C0532925a3b844Bc454e4438f44e
Wallet	A digital storage location or device for keeping cryptocurrencies. Can be 'hot' or 'cold.'



- Not a professional industry (yet).
- But increasingly permeating professional industries:
 - Accounting and tax advice
 - Financial advisors
 - Asset recovery and enforcement - litigators, family law, insolvency practitioners
 - Expert witnesses



Tax advisors

(1) Does the UK tax system apply?

- Problematic devising a test for intangible assets.
- HMRC distinction between exchange tokens and cryptoassets which are the digital representation of an underlying asset.
- Residence vs domicile,

7

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(2) Which tax is payable?

- <https://www.gov.uk/hmrc-internal-manuals/cryptoassets-manual>
- HMRC categorises cryptocurrency as a capital asset subject to CGT and IHT.
- If a trader (rare) then consider the application of reliefs and allowances.
- If part of a remuneration package then subject to income tax and NIC.
- Valuation for any profit or gain must be converted to pounds sterling using a consistent methodology.

8

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(3) How much tax is payable?

- Valuation for any profit or gain must be converted to pounds sterling using a consistent methodology.
- Specialist software e.g. Koinly.

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Accountants

- FRS 102 technical helpsheet issued by the Institute of Chartered Accountants of England And Wales (ICAEW)
- IFRS applies:
 - IAS 38 Intangible Assets with the value accounted for at cost or fair value if there is a liquid trading market and gains/losses recorded as 'other comprehensive income'.
 - Or IAS 2 if the company holds crypto for sale in its ordinary course of business.
- Divergence in approach between jurisdictions, e.g. Financial Accounting Standards Board (FASB) where they are recorded in profit/loss

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Auditors

- ICAEW have issued guidance on considerations in the audit of cryptocurrency. It includes
 - How does the company assess the reliability and availability of information obtained from the blockchain?
 - What procedures are in place to safeguard the private keys?
 - How does management identify related-party transactions on the blockchain?

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Litigation

- Recognised as property: *AA v Persons Unknown* [2019] EWHC 3556 (Comm), *Osbourne v Persons Unknown* [2023] EWHC 39 (Comm), *Tulip Trading v Bitcoin* [2024] EWCA Civ 83.
- Usual civil fraud tools – interim disclosure orders, interim injunctions.
- The main hazards: (1) Full and frank disclosure; (2) The tricky issue of expert evidence; (3) the Need for Speed and (4) Cross-undertakings.

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Tracing



13



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Full and Frank

- Is it ex parte territory?
- Don't skip the basics – the cause of action is the same and the defences will be the same.
- Understand the expert evidence, both its content and its limitations.
- Losses:
 - Own costs and adverse costs

14

14



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Experts

- Is there an acknowledged "body of expertise" governed by recognised standards and rules of conduct capable of influencing the court's decision on issues: *Barings plc v Coopers & Lybrand (No 2)* [2001] Lloyd's Rep Bank 25.
- In a negligent investment case the court held that although there were experts in field of interest hedging instruments, there were no recognisable standards applying to those instruments nor any professional body with recognised expertise: *Darby Properties Ltd v Lloyds Bank* [2016] EWHC 2492 (Ch).

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Experts

- Approach of the courts to date to tracing experts has been to permit this evidence.
- But health warning:
 - Don't know what you don't know.
 - Little to no Part 35 experience.
 - Lessons from *D'Almeida v PU* [2024] EWHC 2342 (Ch).
- Professional indemnity insurance.

16

16



Too Late and Too Exposed

- If the case is one of 'hot pursuit' then time is of the essence.
 - Loss of opportunity if move too slowly. Can often obtain records from an exchange recording transaction times.
 - Putting the exchange on notice.
- A freezing injunction – ascertaining the risk on the cross-undertaking: (i) in respect of assets sent to an address cf. exchange address (ii) in respect of assets sent in transaction number (iii) market exposure.

17

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Legal advisors & Insolvency Practitioners

- Ask the right questions:
 - Family law – Form E – be express, ask for key word search terms.
 - Bankrupt's estate – ask in interviews, bank statements showing payments to Coinbase or Payward, write to exchanges with copy of the bankruptcy order & appointment.
 - Part 71 order against a judgment debtor.
- Valuing cryptocurrencies.

18

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Investment Advice

- Regulated financial advisers cannot recommend or advise on crypto assets.
- FCA has this month lifted its ban on retail investors accessing ETNs - crypto exchange traded notes on regulated exchanges. Its ban on retail access to cryptoasset derivatives remains in place.
- FCA is consulting on applying the FCA Handbook to firms conducting regulated cryptoasset activities.

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Investment Advice

- Hargreaves Lansdown regards crypto as essentially speculative, saying that bitcoin has “no intrinsic value”, is “not an asset class” and that cryptocurrency “shouldn’t be relied upon to help clients meet their financial goals”.

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Pensions

- Investment (2022)
 - 89% of trustees viewed them as too volatile to form part of the portfolio.
 - Eversheds - no realistic expectation that pension funds will be able to invest in unregulated crypto.
 - PWC - ‘a speculative asset.’
 - TPR – investment ‘should always be appropriate to the long term nature of pension obligations’

21

21



Pensions

- Investment (2025)
 - Cartwright Pension Trusts has advised an occupational pension scheme to allocate 3% of its portfolio to Bitcoin
 - TPR still no guidance
 - FCA ETNs announcement, UK investors can also hold ETNs in ISAs and pension Sippis.

22

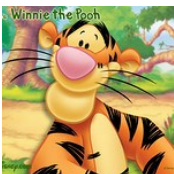
22



- You **can** understand it.
- Digital assets are **not** just a fad.
- Prediction that with more regulation will come more professional negligence claims involving digital assets.

23

23



- Equally, no need to bounce around excitedly creating new departments for professional negligence digital claims.
- You have the skill set already and the key is to build the team with the right mix of specialism.

24

24





Thank you for listening

Helen Pugh (helen.pugh@outertemple.com)
Outer Temple Chambers



Thomas Pangbourne & Rachel Auld
Indemnity Law

“A stitch in time – fixing insurance problems for claimant lawyers”

INDEMNITY.

Thomas Pangbourne

Partner

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Thomas is a Partner at Indemnity. He is a leading specialist in resolving complex, high value financial lines coverage disputes with particular specialism in disputes under solicitors' PI policies.

Thomas is a Partner and a Solicitor Advocate with twenty years' experience in the insurance market. An expert in the field of resolving coverage disputes under solicitors PI policies, Tom's practice also includes resolving tricky and or high value coverage disputes under a range of professional and financial lines policies. Prior to joining Indemnity, Tom was an Of Counsel at CMS and a senior lawyer at DAC Beachcroft.

As a Solicitor Advocate, Tom is highly experienced at leading and managing solicitor and counsel teams through to trial. This experience means that Tom's approach is to think about the end-game at the outset of a coverage dispute, and to provide clear advice on the merits and the evidence as early as possible.

<https://indemnity.law/person/tom-pangbourne/>

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Rachel Auld

Senior Associate

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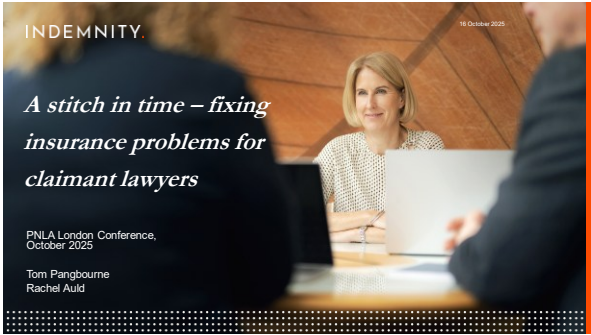


An ex-advisor to insurers, Rachel joined Indemnity as an Associate in 2021.

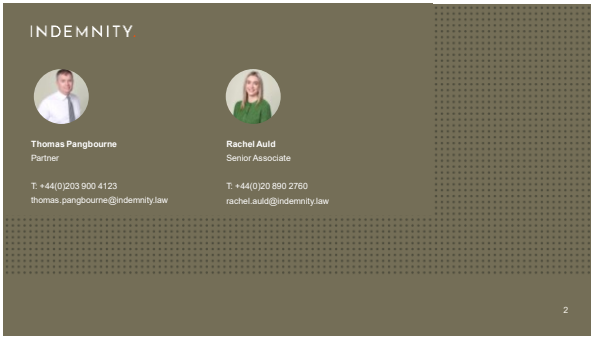
Prior to joining the team, she advised leading insurers on a broad range of coverage issues and worked with loss adjusters, insolvency practitioners, brokers, and policyholders to resolve claims both in and out of court.

Rachel now advises policyholders on the most effective ways to resolve complex coverage disputes, with particular expertise in resolving insurance disputes under financial lines and commercial property policies.

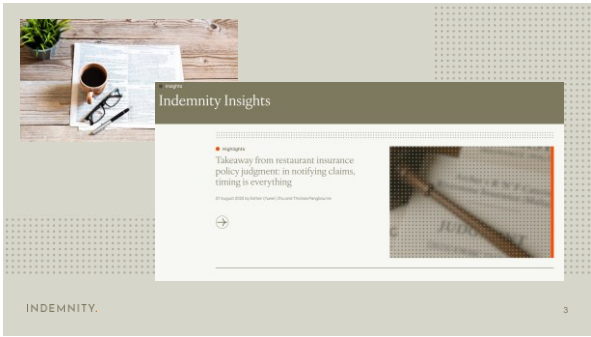
<https://indemnity.law/person/rachel-auld/>



1



2



3

● Conditions precedent

“Action by the Insured

On the happening of any event or circumstance which could give rise to a claim by the Insured under the Policy or on receiving verbal or written notice of any claim the Insured shall:

a) as soon as reasonably possible give notice to the Insurer

[...]

No claim under the Policy shall be payable unless the terms of this Condition have been complied with.

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● Recap: Third Party (Rights against Insurers) Act claims

1. Automatic transfer of rights

2. Single set of proceedings

3. Schedule 1 – Information and disclosure for third parties

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Schedule 1, paragraph 3

(i) whether there is a policy in place

(ii) identity of insurer

(iii) terms of the policy

(iv) whether insurer has claimed not to be liable under the policy

(v) whether there are any coverage proceedings

(vi) how much of the limit has been paid out

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6

A photograph showing a man with grey hair, wearing a white dress shirt and a patterned tie, standing and talking to a woman. The woman is wearing a dark dress with a light-colored pattern. They are in an office setting with a window and a plant visible in the background.

6

High Court guidance on application of TPRAI Act 2010

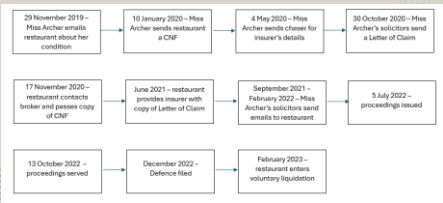
*Archer v R 'n' F Catering Ltd
(t/a Biplob Restaurant) & Anor*
[2025] EWHC 1342 (KB)
— stable door shut, horse bolted



INDEMNITY 7

7

Timeline



```
graph LR; A[29 November 2019 - Miss Archer emails restaurant about her condition] --> B[10 January 2020 - Miss Archer sends restaurant a CWF]; B --> C[4 May 2020 - Miss Archer sends chequer for insurer's details]; C --> D[30 October 2020 - Miss Archer's solicitors send a Letter of Claim]; D --> E[17 November 2020 - restaurant contacts broker and passes copy of CWF]; E --> F[June 2021 - restaurant provides insurer with copy of Letter of Claim]; F --> G[September 2021 - February 2022 - Miss Archer's solicitors send emails to restaurant]; G --> H[5 July 2022 - proceedings issued]; H --> I[13 October 2022 - proceedings served]; I --> J[December 2022 - Defence filed]; J --> K[February 2023 - restaurant enters voluntary liquidation];
```

INDEMNITY. 8

8

Issues for the court

1. Was the insurer entitled to deny liability under policy for the defendant's breach?
2. Could Miss Archer rely on section 9(2) of the Act to cure the defendant's breach?



INDEMNITY. 9

9

● General Claims Conditions

1a – notification of a claim or circumstances as soon as reasonably practicable

1e - supply of full details of the claim together with relevant evidence and information within 30 days of a circumstance or request

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● TPRAI Act 2010, section 9(2)

“Anything done by the third party which, if done by the insured, would have amounted to or contributed to fulfilment of the condition is to be treated as if done by the insured.”

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● Other grounds

Horne v The Prudential Assurance Co Ltd [1997] SLT (Sh Ct) 75

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12

High Court guidance on application of TPRAI Act 2010

Makin v (1) The Restaurant Muse Ltd (2) Protec Security Group Ltd (3) QBE Ins [2025] EWHC 895 (KB)

– too little, too late



INDEMNITY13

13

Claims Condition 2

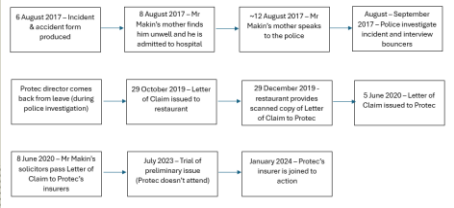
2 Writ, summons, etc

You must not respond to any letter, writ or summons or other document sent to you in connection with any accident, incident or occurrence that may relate to any claim under your policy or which may give rise to a claim under any Section of your policy. You must immediately send them to Sutton Specialist Risks Ltd unanswered by return of post, or to us or legal representatives as may otherwise be advised by us.

INDEMNITY14

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Timeline



```
graph LR; A[6 August 2017 - Incident & accident form produced] --> B[6 August 2017 - Mr Makin's mother finds him unwell, and he is admitted to hospital]; B --> C[~12 August 2017 - Mr Makin's mother speaks to the police]; C --> D[August - September 2017 - Police investigate incident and interview bouncers]; D --> E[Protec director comes back from leave (during police investigation)]; E --> F[29 October 2019 - Letter of Claim issued to restaurant]; F --> G[29 December 2019 - restaurant provides scanned copy of Letter of Claim to Protec]; G --> H[5 June 2020 - Letter of Claim issued to Protec]; H --> I[8 June 2020 - Mr Makin's solicitors pass Letter of Claim to Protec's insurers]; I --> J[July 2020 - Trial of preliminary issue (Protec doesn't attend)]; J --> K[January 2024 - Protec's insurer is joined to action];
```

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15

● Claims Condition 3.5

3 Notification of claims

You or any other party insured by your policy must inform Sutton Specialist Risks Ltd:

...

3.5 within as soon as practical but in any event within thirty (30) days in the case of any other damage, bodily injury, incident, accident or occurrence, that may give rise to a claim under any your policy but not specified separate above.

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● Mitigation steps for claimants

Fixing the roof while the sun shines?

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● Mitigation steps for claimants

Who is your target? Minimum terms re limit of indemnity, notification, CPs?

➡ Cl. C2.1, ICAEW PII minimum approved policy wording

Minimum terms re claimant information entitlement?

➡ Rule 9.2, SRA Indemnity Insurance Rules

Provision of Service Regulations 2009

Give notice to insurers?

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Thanks!

If you require any further information from us,
please do not hesitate to ask.



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19



Margaret Wright (RIBA)
Hawkins & Associates Limited

“The Forensic Architect’s Perspective”

Margaret Wright

Senior Associate

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margaret.wright@hawkins.biz



Margaret qualified as an Architect in November 1995 and has worked for several AJ100 architecture practices, most notably joining EPR Architects Limited in 1997 and becoming a company director in 2005.

In 2010, Margaret joined Tindall Riley & Co as one of the team managing the Wren Insurance Association (Wren) on behalf of its member practices where she was appointed Director of Risk Management before joining Hawkins.

As a Wren Manager, Margaret was responsible for giving both general risk management, and detailed project-specific liability advice to Wren members in relation to their professional indemnity insurance, and in the avoidance of claims. She also advised those acting as contract administrator, as well as those providing retained monitoring services for the employer when novated to the contractor.

Margaret has first-hand experience of traditional, design and build procurement with novation, and worked on a range of projects including hotels, offices, residential, shopping centres and schools.

As well as identifying risks that affect architects and the wider construction industry, Margaret authored guidance on a range of topics that included:

- Information management and cloud-based information platforms
- Contract administration
- Sub-consulting and outsourcing
- Design responsibilities in respect of projects adopting volumetric construction
- BIM documentation
- Post-occupancy evaluations
- The reuse of materials

With the introduction of the Building Safety Act 2022, she has advised on the potential implications of the Building (Appointment of Persons, Industry Competence and Duty holders) Regulations and PAS 8671.

As a member of the RIBA Professional Services Contract (PSC) Editorial Group, Margaret has detailed knowledge of the RIBA PSCs and architects' services.

Margaret joined Hawkins in June 2023 as a Senior Associate in the London office.

The Role of Principal Designer

Margaret Wright RIBA
Senior Associate at Hawkins & Associates

Hawkins
Leading in forensic investigation

1

Introduction

Hawkins and Associates Limited
The presenter

Hawkins
Leading in forensic investigation

2

Hawkins' Expertise

Fire & Explosion - Vehicle & machinery fires - Fire in buildings - Fire stop and spread - Fire modelling - Explosions		Built Environment - Forensic architecture - Civil engineering - Fire engineering - Quantum & Delay - Flooding & hydrology - Acoustics & vibration	
Road Traffic Collisions - Collision reconstruction - Vehicle examinations		Marine - Cargo stowage - IMDG / IMDG cargo - Liquefaction - Master mariner	
Cyber, Digital & Technology 3D modelling - Data recovery - Digital forensics - Video analysis		Materials, Chemistry & Biology - Contamination / pollution - Metallurgy - Composites - Plant pathology	
Power & Energy - Thermal Power - Oil & Gas - Renewables		Personal Injury - Construction injuries - Falls from height - Lifting operations - Manual handling	
Engineering - Electrical/Electronics - Mechanical - Chemistry & process			

Hawkins
Leading in forensic investigation

3

Margaret Wright

- Architect with 29 years post-registration experience
- Worked in practice and in architects' professional indemnity insurance
- Act as an expert witness
- Draft RIBA Professional Services Contracts
- Part III examiner



Hawkins
LONDON'S FIRST INVESTIGATION

4

What this presentation covers:

- Legal framework and compliance
- Overview of the role and appointment of the Principal Designer
- Principal Designer's statutory duties
- Competence

Hawkins
LONDON'S FIRST INVESTIGATION

5

Primary Legal framework

- The Health and Safety at Work Act 1974
- The Building Act 1984
- The Building Safety Act 2022



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LONDON'S FIRST INVESTIGATION

6

Secondary Legal framework

[illegible]

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[illegible]

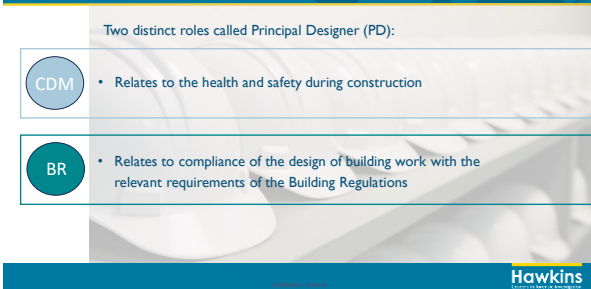
Dutyholders

- Client
- Principal Designer
- Principal Contractor
- Designers
- Contractors

8

[illegible]

Principal Designer x 2



Two distinct roles called Principal Designer (PD):

- CDM
 - Relates to the health and safety during construction
- BR
 - Relates to compliance of the design of building work with the relevant requirements of the Building Regulations

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Construction

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Principal Designer x 2

Both to be appointed directly by the Client...

CDM

- The designer with control over the pre-construction phase

BR

- The designer with control over the design work

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Principal Designer's statutory duties

CDM

General duties (all designers)
Principal Designer's duties

BR

General duties (all designers)
Principal Designer's duties
Mandatory reporting duties

HRB

Compliance declarations for HRBs

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CDM Principal Designer's statutory duties

CDM

- Plan, manage and monitor, and coordinate matters relating to health and safety during the pre-construction phase
- Help the client collate pre-construction information, and provide to the designers and contractors
- Identify and eliminate foreseeable health and safety risks to anyone affected by the work / take steps to reduce or control risks
- Ensure communication and cooperation in the pre-construction phase
- Liaise with the principal contractor, keeping them informed of any risks that need to be controlled during the construction phase

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BR Principal Designer's statutory duties

BR

- Plan, manage and monitor, and coordinate matters relating to design during so that the design (if built to that design) complies with the relevant requirements of the building regulations.
- Take all reasonable steps to ensure:
 - Designers communicate and cooperate
 - The design is coordinated
 - The designers comply with their duties
- Liaise with the Principal Contractor

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Part 2A Competence: general requirement

BR

Regulation 11F - Designers and Contractors must have the:

"skills, knowledge, experience and behaviours necessary"

- Should not accept the appointment if not competent
- Individual and organisational competence
- Supervision of people in training

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Part 2A Competence: principal designer

BR

Regulation 11G Principal Designers must have the:

" skills, knowledge, experience and behaviours necessary"

- Individual and organisational competence
- Where an organisation, designate an individual
- Should not accept the appointment if not competent

NB. Principal Contractor under 11H

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Appointment of the Principal Designer

- RIBA Professional Services Contracts (PSCs)
- Separate to the architectural appointment (except Domestic)
 - HRB duties under the BRPD PSC and Standard PSC
- Bespoke appointments
- generally incorporated into the architectural appointment

CDM

"So far as is reasonably practicable"

BR

"Take all reasonable steps"

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Professional Indemnity Insurance

Statutory duties

- Breach is a criminal offence
- Insured so far as is allowable by law

Contractual liabilities

- Exclusions for absolute obligations

Widespread restrictions on scope of cover e.g.:

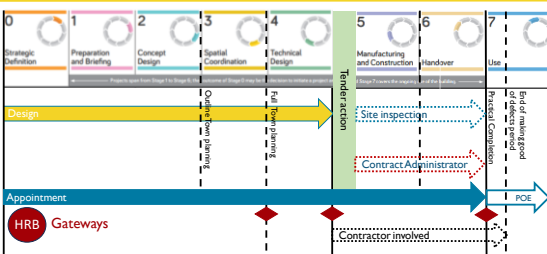
- Blanket fire safety exclusion (some with retroactive date)
- Restrictions regarding basements



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Appointment – Traditional Procurement



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Appointment – Design and Build Procurement

The diagram illustrates the timeline and phases of the Design and Build procurement process, numbered 0 through 7.

Phases and Milestones:

- 0 Strategic Definition**
- 1 Preparation and Briefing**
- 2 Concept Design**
- 3 Partial Coordination**
- 4A Technical Design**
- 4A Technical Design** (continued)
- 5 Manufacturing and Construction**
- 6 Handover**
- 7 Use**

Key Milestones and Transitions:

- Employer's proposal** (between 3 and 4A)
- Site inspection for the Contractor** (between 4A and 5)
- Novation - ab initio** (between 5 and 6)

Appointment Phases:

- Appointment I** (from 0 to 4A)
- Appointment II** (from 4A to 7)

HRB (Health, Risk, Budget) and Gateways:

- HRB** (Health, Risk, Budget) is shown as a red circle with a white 'X'.
- Gateways** are indicated by red diamonds on the timeline.

Additional Information:

- May be appointment switch** (indicated by a red diamond on the timeline).
- Contracted duties for the Contractor and/or retained duties for the Employer** (indicated by a red diamond on the timeline).

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Key Points

- Two distinct roles called Principal Designer
- Statutory duties and competence requirements
- The appointment is dependent on the procurement route
- The role can pass between parties



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Any Questions?

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David Osborne
Fraser Dawbarns LLP

“Tips and Traps – Third Parties (Rights against Insurers) Act 2010”



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David Osborne is a Solicitor and Senior Associate in the Dispute Resolution department, based in the King's Lynn office. David is also the firm's Client Relations Manager. David specialises in all forms of dispute resolution with a particular focus on professional negligence, where he is a member of the PNLA (Professional Negligence Lawyers Association).

David also focusses on matters involving insurance, inquests, and Solicitors' regulatory and compliance issues.

David's typical clients are those who need guidance and advice on professional negligence issues, representing both businesses and individuals as claimants and professionals such as solicitors, accountants, architects, and developers as defendants. David particularly enjoys the problem-solving aspect of his work and enjoys it when his work presents a challenge. Clients can expect clear and objective advice, delivered honestly, whether the news is good or bad.

David studied Modern & Medieval Languages (German and Latin) and Law at Magdalene College, Cambridge where he was involved in the Union Debating Society and coxed the college's 1st crew. David then completed his Law Society Finals at Birmingham Polytechnic, qualifying as a Solicitor in 1990.

Before joining Fraser Dawbarns in 2003, David worked in the city and at local law firms. His early legal career was spent in London firms where he was focused on maritime and shipping law which often involved complex cross jurisdictional issues. During this time, David was involved in the Zebrugge Ferry Disaster Formal Inquiry and the MV Derbyshire Formal Inquiry.

<https://www.fraserdawbarns.com/people/david-osborne/>



Tips and Traps – Third Parties (Rights against Insurers) Act 2010

16 OCTOBER 2025
OUTER TEMPLE CHAMBERS/PNLA
DAVID OSBORNE

**Fraser
Dawbarns**
SOLUTIONS

1

Contents

- Third Parties (Rights Against Insurers) Act 1930
- Third Parties (Rights Against Insurers) Act 2010
- Limitation issues
- Traps – scenario one
- Traps – scenario two
- Tips
- Questions

2

Third Parties (Rights Against Insurers) Act 1930

Still applies if:

- ▶ Insured incurred liability before 01.08.16 AND
- ▶ Insolvency of insured occurred before that date.

Consequences:

- ▶ Must first bring claim against the insured before you can claim against the insurer
- ▶ May need to restore dissolved insured to bring the claim against the insured.

3

Third Parties
(Rights Against
Insurers) Act
2010

Applies where:

- ▶ Insured becomes insolvent or subject to insolvency event after 01.08.16 OR
- ▶ Insured incurs a liability after 01.08.16.

Consequences:

- ▶ Can proceed against insurer without need to add insured to proceedings – no need to first sue insured
- ▶ Still must establish liability of insured to claim against insurer – judgment, arbitration award, declaration under s2 of the Act
- ▶ Avoids the need to have to restore dissolved insured.

4

Limitation issues

Third party not issued against insured at time of insolvency

- ▶ 1930 Act – can rely on the principle that insured’s insolvency stops time running – Financial Services Compensation Scheme Ltd-v-Larnell (Insurances) Ltd (In liquidation) [2005] EWCA Civ 1408
- ▶ 2010 Act – time does not stop running for limitation – so there is a risk the claim against the insurer will be time-barred even if the limitation was not expired when the insured wound up – Rashid-v-Direct Savings Ltd [2022] 8 WLUK 108.



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Traps –
scenario one

Mr. F - claim against solicitors

- ▶ Alleged negligent act 2009 – failure to advise of title defect on acquisition of property
- ▶ Date of knowledge 2018 – instructed FD LLP solicitors November 2019
- ▶ Defendant firm sole practice – intervened in by SRA and closed 25.03.11
- ▶ Sole practice became LLP and dissolved 23.10.12
- ▶ Letter of Claim issued to Solicitors Indemnity Fund (SIF) and Standstill Agreement entered with SIF
- ▶ SIF declined to extend Standstill – protective Claim Form issued 19.04.23 – SIF Defendant.

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Traps – scenario one

The Trap:

- ▶ 1930 Act applied – so had to sue Defendant firm first before claim against insurers (SIF)
- ▶ The LLP was dissolved not from insolvency, therefore six-year limitation period to restore, Siddique-v-HDI Global and Rashid-v-Direct Savings Ltd this is a longstop
- ▶ If sue individual sole practitioner would be amending Claim Form to add party after expiry of Limitation – individual had not been subject of insolvency.

7

Traps – scenario one

Result:

- ▶ SIF not correct party to Standstill or Defendant on protective Claim Form
- ▶ Had to allow Claim Form to lapse – client had negligence claim against solicitors advising him on the claim which was settled.

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Traps – scenario two

Mrs E – Claim against solicitors AB Ltd

- ▶ AB Ltd was a sole practice
- ▶ Mrs E alleged AB Ltd was negligent in providing pensions advice on divorce financial remedy proceedings in 2015
- ▶ November 2019 – Mrs. E's solicitors request and are provided with file
- ▶ February 2021 - Letter of Claim issued by Mrs. E's solicitors – claim £190,000
- ▶ Sole practitioner retired and FD LLP agreed to provide run-off cover, and so were the successor practice but only for insurance purposes. There was no merger
- ▶ AB Ltd dissolved 16.04.19 – not insolvency.

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Traps – scenario two

- ▶ When providing AB Ltd.'s file and again when acknowledging the LoC FD LLP stated in terms to Mrs. E's solicitors there had been no merger, and FD LLP did not act for Mrs. E
- ▶ Mrs. E's solicitors required a Standstill Agreement. FD LLP removed a clause effectively stating that FD LLP would be correct Defendant. Removal of clause accepted by Mrs. E's solicitors and Standstill executed and signed by FD LLP
- ▶ Standstill extended to October 2022
- ▶ A further extension was declined by FD LLP.



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Traps – scenario two

The Trap:

- ▶ Insolvency/Dissolution of AB Ltd post 01.08.16 so 2010 Act applied
- ▶ Limitation therefore not suspended by dissolution
- ▶ FD LLP not correct Defendant or party to Standstill
- ▶ AB Ltd could not have executed Standstill without first being restored.

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Traps – scenario two

Result:

- ▶ Mrs. E could not sue FD LLP as the retainer was with AB Ltd not FD LLP and there was no merger between AB Ltd and FD LLP
- ▶ Mrs. E could not pursue FD LLP insurers under the 2010 Act as insurers would say claim against FD LLP as their insured was time barred
- ▶ Mrs. E could have restored AB Ltd but did not have enough time before either Standstill expired or her s14A date of knowledge expired
- ▶ Mrs. E abandoned claim.

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Tips

- ▶ Check whether it would be 1930 or 2010 Act that applies to any given situation at outset – can be crucial to limitation issues
- ▶ Think carefully about correct Defendant and who is the correct party to Standstill – especially where the Defendant firm no longer exists
- ▶ Where the Defendant firm has ceased to exist – investigate whether merger and successor practice or merely providing run-off cover and so successor practice for insurance purposes only.

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Questions?

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Thank you



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Before joining iDS, Dominic developed his consultative expertise in eDiscovery over the course of 15 years, consulting on the use of technology in support of a range of significant investigations, High Court litigations, and arbitration matters across public and private sectors. In his previous role, Dominic lead EMEA operations and eDiscovery consulting for another leading eDiscovery provider.

At iDS, Dominic's role is focused on the application of technology across all phases of disclosure, including the use of analytics and predictive coding, and he has a particular interest in the Disclosure Pilot Scheme currently proceeding in the English courts. Since the introduction of the GDPR, Dominic has also assisted various law firms and corporations to manage their responses to high volumes of Data Subject Access Requests (DSARS).

Dominic lives in Oxfordshire with his wife and two young daughters. When he's not crunching evidence, he enjoys the great outdoors with his family, some offroad cycling, a bit of running and an even smaller bit of windsurfing.

EDUCATION

- GDL & LPC, BPP Law School
- University of Reading

"It's not a faith in technology. It's faith in people."

– Steve Jobs





*Questions and discussion
&
Chairman's closing remarks*



Katy Manley
PNLA President
BPE Solicitors

“PNLA News Update & Future Events”



Katy Manley LLB

PNLA President
Consultant – BPE Solicitors

Katy Manley trained in London and qualified as a solicitor in 1989 moving to the west country in 1991.

She was made an equity partner in a leading Bristol practice in 1995 becoming Head of the Professional Negligence team. She remained with this firm until the launch of Manley Turnbull in 2006 which, until closure in 2022, specialised in professional negligence claims.

Katy is a founder member and President of the Professional Negligence Lawyers Association ('PNLA') launched in 2004. With the management team, Katy has been responsible for arranging seminars and events, lobbying Government and consultation with regulatory and other bodies. Through the PNLA seminars Katy has developed a very strong network of relationships with members of the Bar, experts and solicitors throughout the UK and Ireland with an identity of interest in this niche practice area.

Katy is one of the leading names for claimant professional negligence work and is known not only for her practice but also for publishing articles and lecturing on the subject.

Publications: Strategy & Tactics Chapter 4 – Simpson: Professional Negligence & Liability loose leaf



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