



**PROFESSIONAL NEGLIGENCE AND  
LIABILITY UPDATE**

**LEEDS CONFERENCE**

**Thursday, 26th March 2026**

**PNLA**

**LEEDS CONFERENCE**

Hosted by Clarion Solicitors, Elizabeth House, 13-19 Queen Street, Leeds, West Yorkshire LS1 2TW  
Thursday, 26th March 2026

0830–0900 Registration and Refreshments

0900–0920

*“Chairs’ Address”*

**Andrew McAulay and Joanne Chase – Clarion Solicitors**

0920–0950

*“Keynote Address”*

**His Honour Judge Malcolm Davis-White KC**

0950–1030

*“Potential Witnesses, Witness Statements and the Effect of Confidentiality”*

**Howard Elgot – Parklane Plowden Chambers**

1030–1045 Refreshments

1045–1130

*“Update on Limitation”*

**James Malam – Exchange Chambers**

1130–1215

*“Wins for solicitors: assumptions of responsibility, loss of a chance and breach of trust”*

**Catherine Shuttleworth – Partner – Kennedys**

1215–1300

*“Tips & Traps instructing Experts”*

**Gemma Horner – Partner – Levi Solicitors**

**& Chris Makin FCA FCMI FAE QDR MCI Arb – Forensic Accountant**

1300–1400 Lunch

1400–1440

*“Update on Limitation”*

**Ben Harding – Kings Chambers**

1440–1420

*“The Claimant Perspective”*

**Jonathan Watmough – Partner – Keystone Law**

1520–1535 Refreshments

1535–1615

*“Professional Negligence & Costs”*

**Anna Lockyer & Joanne Chase – Clarion Costs**

1615–1655

*“An update on Mazur”*

**Fraser Barnstaple – Kings Chambers**

1655–1700

*“Closing remarks”*

**Katy Manley – PNLA President – BPE Solicitors LLP**

1700–1900

*Exchange Chambers & Parklane Plowden Chambers  
would like to invite you to a drinks reception*

- held @ Exchange Chambers, Oxford House, Oxford Row, Leeds LS1 3BE.

**PROFESSIONAL NEGLIGENCE AND LIABILITY  
LEEDS CONFERENCE  
Thursday, 26th March 2026  
ATTENDEES (1 of 2)**

<b>His Honour Judge Malcolm Davis-White KC</b>		Newcastle Upon Tyne
<b>Nick Armitage</b>	Ramsdens Solicitors	Huddersfield
<b>Fraser Barnstaple</b>	Kings Chambers	Leeds
<b>Joanne Chase</b>	Clarion Solicitors	Leeds
<b>Beth Collings</b>	Clarion Solicitors	Leeds
<b>Raymond Davidson</b>	Davidsons Forensic Accountants	Leeds
<b>Lindsay Dixon</b>	Ison Harrison Solicitors	Leeds
<b>Kevin Donoghue</b>	Donoghue Solicitors	Liverpool
<b>Howard Elgot</b>	Parklane Plowden Chambers	Leeds
<b>James Fox</b>	QBE	London
<b>Robert Godfrey</b>	Bond Turner	Liverpool
<b>David Hall</b>	Ison Harrison Solicitors	Leeds
<b>Ben Harding</b>	Kings Chambers	Leeds
<b>Rianna Hill</b>	QBE	Leeds
<b>Daniel Hilton</b>	Newtons Solicitors	Wakefield
<b>Gemma Horner</b>	Levi Solicitors	Leeds
<b>James Jobling</b>	Temple Legal Protection	Surrey
<b>James Johnston</b>	Burnetts Solicitors	Carlisle
<b>Sukhbir Kaur</b>	Temple Legal Protection	Surrey
<b>Anna Lockyer</b>	Clarion Solicitors	Leeds
<b>Chris Makin</b>	Forensic Accountants	Mirfield
<b>James Malam</b>	Exchange Chambers	Leeds
<b>Katy Manley</b>	PNLA & BPE Solicitors	Cheltenham
<b>Dusan Manojlovi</b>	DLG Legal Services	Kent
<b>Warren Maxwell</b>	Stewarts Law	London

<b>Andrew McAulay</b>	Clarion Solicitors	Leeds
<b>David Osborne</b>	Fraser Dawbarns	Cambridgeshire
<b>Nick Porter</b>	Buckles Solicitors	Peterborough
<b>Catherine Shuttleworth</b>	Kennedys	Leeds
<b>Sandip Singh</b>	Addleshaw Goddard	Leeds
<b>Christopher Smith</b>	Stewarts Law	London
<b>Ed Smith</b>	Levi Solicitors	Leeds
<b>Gillian Tatt</b>	Square One Law	Newcastle Upon Tyne
<b>Brian F Walker</b>	Walker McDonald Solicitors	Ireland
<b>George Walker</b>	Clarion Solicitors	Leeds
<b>Jonathan Watmough</b>	Keystone Law	Leeds
<b>Louise Wilson</b>	Eversheds Sutherland	Leeds
<b>Catrin Wyn Williams</b>	Fenchurch Law	Leeds



**In association with**





**Andrew McAulay & Joanne Chase  
Clarion Solicitors**

*“Chairs’ Address”*



## Andrew McAulay

Partner

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T: 07764 501 252

Andrew McAulay has 25 years' experience and the Head of the Costs and Litigation Funding team which he has successfully grown it to be a nationally and internationally recognised service.

Andrew enjoys advising on high value and complex costs litigation matters, with his specialist areas being commercial litigation, serious injury and solicitor/own client costs disputes. Andrew also has extensive experience and knowledge of litigation funding, with real expertise in conditional fee agreements and third-party funding.

Andrew is a costs lawyer and a mediator. He is a Fellow of the Association of Costs Lawyers. Andrew is the former Head of the Management Board of the Association of Costs Lawyers Training (ACLT) Limited. He is a board member of the Costs Lawyer Standards Board (CLSB), which is the regulator for Costs Lawyers in England and Wales. Andrew is ranked as one of the leading costs lawyers in the country by Chambers & Partners and Legal 500. He sits on the Executive/Management Board for Clarion.

<https://www.clarionsolicitors.com/our-people/andrew-mcaulay>



**Clarion**



## **Joanne Chase**

Legal Director

E: [joanne.chase@clarionsolicitors.com](mailto:joanne.chase@clarionsolicitors.com)

T: 07826 166 300

Joanne Chase has a wealth of experience working with many of the top firms listed in the Legal 500. She is a Costs Lawyer, and a Fellow of the Association of Costs Lawyers with over 19 years' experience in legal costs. Joanne is comfortable receiving instructions from both receiving and paying parties, and she specialises in costs recovery for high value complex matters. Joanne is also comfortable working with both professional clients and Litigants in Person.

Joanne leads the civil and commercial litigation costs side of the team at Clarion, and her knowledge and experience dealing with all types of legal costs is invaluable when supervising other members of the team.

Joanne regularly speaks at both internal and external events and delivers training on all aspects of costs including litigation funding and maximising costs recovery from a claim.

<https://www.clarionsolicitors.com/our-people/joanne-chase>



**Notes: -**

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**His Honour Judge Malcolm Davis-White KC**

*“Keynote Address”*



## His Honour Judge Malcolm Davis-White KC

Malcolm Davis-White is a Specialist Circuit Judge based in Newcastle. He is authorised to sit in all the courts of the Business and Property Courts, as well as in the Administrative Court, the Upper Tribunal (Immigration and Asylum Chamber).

His Honour Judge Davis-White KC was called to the Bar in 1984. He was appointed QC (now KC) in 2003. His practice was grounded in the fields of company, insolvency and financial services law but also encompassed a broad commercial, regulatory and governmental practice. He was a member of the Attorney-General's Civil "A" panel, a Senior Decision Maker of the Guernsey Financial Services Authority and, in the latter part of 2016, was appointed to be a Judge (acting) of the High Court, Eastern Caribbean Supreme Court sitting in the Commercial Court in the British Virgin Islands.

He was appointed a Recorder in 2009 and a Deputy High Court Judge sitting in the Chancery Division in 2013. Since December 2016 he has been a Specialist Chancery and Circuit Commercial Judge, based on the North Eastern Circuit. He is the lead Chancery Circuit Judge for the North Eastern Circuit. He was the joint author with Professor Sandra Frisby of *Kerr on Receivers and Administrators* (19th Edn) and is joint author, with Professor Adrian Walters, of *Directors Disqualification and Insolvency Restrictions*.



**Notes: -**

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**Howard Elgot**  
**Parklane Plowden Chambers**

*"Potential Witnesses, Witness Statements  
and the Effect of Confidentiality"*



**HOWARD ELGOT**  
**PARKLANE PLOWDEN - Called 1974**  
[howard.elgot@parklaneplowden.co.uk](mailto:howard.elgot@parklaneplowden.co.uk)

Howard has been short-listed nationally as the Law Society Barrister of the Year.

He was one of the lead counsel in the British Coal VWF Professional Negligence claims brought against solicitors, arising out of industrial disease litigation, and has acted in many other multiparty professional negligence claims arising out of personal injury and clinical negligence claims, and property and commercial transactions. Howard has advised in various group litigation professional negligence claims relating to property development at home and overseas, particularly in Italy, Egypt and Turkey, and has acted in many claims both for and against surveyors.

In *Barton v Wright Hassall LLP* [2018] 1 W.L.R. 1119, Howard acted as leading counsel for the claimant in the Supreme Court, leading Abigail Telford, also of Parklane Plowden Chambers.

Howard also acted as counsel for the claimant in the landmark solicitors' negligence claim of *Liddle v Atha and Co* [2018] 1 W.L.R. 4953 and as counsel for the solicitor defendant in the High Court and Court of Appeal in *Evans v Betesh Partnership* [2022] RTR 1. He was counsel for the claimant in *Walton v Pickerings Solicitors* [2022] 1 W.L.R. 4964.

Howard has spoken at national conferences held by the Professional Negligence Law Association in 2022 and 2025 and has been invited to speak again at the March 2026 PNLA conference.

Howard has acted in very many mediations and appeared in the Court of Appeal in the leading group of cases on ADR, reported collectively as *Halsey v Milton Keynes* [2004] 1 W.L.R. 3002. He has given many talks on mediation viewed from counsel's perspective.

WILLIAMS & GOWERS MEMBER A  
**POSITIVE DIFFERENCE**



*"Potential Witnesses, Witness Statements and the Effect of Confidentiality"*

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Howard Elgot – Parklane Plowden Chambers

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P.N.A. March 2026

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A Two Part Talk



Confidentiality and Witnesses



Civil Justice Council Interim Report and Consultation on Use of AI in Preparing Court Documents – Section 7 - Witness Statements.

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P.N.A. March 2026

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Confidentiality

Confidentiality issues arise in many professional and other relationships.

Lawyers,  
 doctors and other medical advisers,  
 employers & employees,  
 bankers,  
 police,  
 teachers,  
 clergy,  
 journalists,  
 mediators,  
 counsellors  
 etc

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# Confidentiality and Privilege



DIFFERENT CONCEPTS-  
DIFFERENT RULES



DIFFERENT LECTURE

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## The Problem

A potential witness might have important information that may assist your client in litigation.

But he/she owes a duty of confidentiality to another party to the litigation or prospective litigation, or to a third party.

Can you interview or otherwise obtain a statement from that witness?

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# White Book 2025



The only reference to this issue in the White Book is a quite random paragraph in the middle of 31.12.2 which refers to *Nicholson v Halton General Hospital NHS Trust* [1999] P.I.Q.R. P310, Court of Appeal.



Part 31 is headed "Disclosure and Inspection of Documents".



31.12.2 is headed "The court may make an order for specific disclosure or specific inspection." *Nicholson v Halton General Hospital NHS Trust* is not about "Disclosure and Inspection of Documents".

Howard Elgot Paterson Pensions Chambers

PNLA March 2025

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• "There is no property in a witness, but there is the right of confidentiality between a patient and his treating doctor which the law will uphold. It is a right which it is for a patient to waive and he can only waive it voluntarily. The court will not order him to waive such a right. But **in an appropriate case**, the court can order that the claim be **stayed** until such time as he consents to **waive his right of confidentiality.**" (emphasis added)

• Sumner J in *Nicholson v Halton General Hospital NHS Trust* [1999] P.I.Q.R. P310, Court of Appeal

• What is an "appropriate case"?



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Nicholson v  
Halton  
General  
Hospital NHS  
Trust

• The Defendant wanted to interview Professor Stanley, who had carried out an operation on the Claimant. He was not a party to the claim. Disclosure of the Claimant's medical records had already taken place. Professor Stanley did not want to co-operate with the Defendant. He stated that:-

• "My concern would be for the doctor/patient relationship and I would be reluctant to be involved unless specifically instructed to do so by the Court."

• The Court of Appeal ordered a stay "in the form that, unless within 14 days the claimant consents to waive her right to confidentiality so that Professor Stanley can state, firstly what anatomical [lesions] were found during the operation carried out on the claimant's right forearm in May 1996, and secondly, what condition required the repair of the lesion then found; this action be stayed".

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PNLA March 2025

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Nicholson  
(continued)

Beldam LJ

"Professor Stanley is, no doubt, a busy specialist, and to avoid the need for him to attend court, it would have been simple for the defendants' advisers to have drafted a request for the answers to the limited matters which Professor Spigelman required to know. It would have been equally simple for the claimant's advisers to advise the claimant to waive her right to confidence to the limited extent required."

Howard Elgot Parklane Fowden Chambers  
PPLA March 2020

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FAIRLAW FLOWCHART MAKING A POSITIVE DIFFERENCE

Subsequent Cases

- Nicholson v Halton General has been distinguished or ignored in other cases.
- Will Nicholson ever be followed? It never has been, in any case I have been able to find. It was distinguished in Porton Capital Technology v 3M UK Holdings 2010 EWHC 114 (Comm).
- Christopher Clarke J was asked for an "order staying 3M's counterclaim until it waives the confidentiality obligations to the defendants of the two individuals .....in respect of the matters in dispute as between the parties for the purposes of the proceedings".

Howard Elgot Parklane Fowden Chambers  
PPLA March 2020

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FAIRLAW FLOWCHART MAKING A POSITIVE DIFFERENCE

Porton v Capital Technology

- At para. 16 the judge recorded that:-
 

"In his submissions Mr Jeffrey Onions, QC, for the claimants indicated that what he principally sought was .....[to] secure that the two individuals could be interviewed without their responses being conditioned by the constraints of any duty of confidentiality to anyone in the 3M group."

39. The obligation of the court to deal with matters "justly" sits ill with an exercise of judicial discretion which absolves an individual from his legal duty. I note that in Russell v Keadan [2005] NSWCA 328 the Court of Appeal of New South Wales held that the right of a party to call evidence in court did not permit or require a potential witness to breach an obligation of confidence other than in giving of evidence in court, nor enable a person wishing to call such a witness to require the witness to provide information that would breach such an obligation.

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## Porton (continued)

- 41. The need to deal with a case “fairly” is a somewhat protean obligation. It may be, as the court in *Richards v Kadian* decided (but on which I express no opinion), that **if a litigant satisfies the court that a fair trial of the action cannot be heard whilst his opponent insists on a right to keep information confidential**, that the court will stay his action until that right of confidentiality is no longer insisted on. Even if that is so, I do not accept that in a case such as the present, where the claimants’ case has been fully pleaded, extensive disclosure has been given, **and, as matters stand, both of the two individuals are intended to be called, a fair trial of the action cannot be held.**” (emphasis added)

Howard Elgot Parklane Pooleton Chambers  
PNLA March 2026

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## Glenn v Watson



The Porton Capital case was followed in *Glenn v Watson* 2017 4 WLR 48. An application by the defendants was “designed to enable them to speak to a prospective witness, Mr David Miller, about certain topics” (para. 2).

“4. Mr Miller played a significant role in the matters of which the claimants complain. They do not propose to call him as a witness. The defendants do wish to call him, or at any rate consider calling him, as their witness. For that purpose they would, for obvious reasons, wish to talk to him first about the evidence he would give if called.”



Nugee J refused the application by the defendant.  
*Nicholson v Halton General* was not referred to in the judgment.

Howard Elgot Parklane Pooleton Chambers  
PNLA March 2026

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## Glenn v Watson (continued)

- “40……. Questions arising out of the relationship between Sir Owen and Mr Miller can be gone into at trial and both Sir Owen and Mr Miller can be asked questions about that relationship at trial. Subject to privilege, disclosure has been (or should have been) given of documents relating to that relationship. But this does not mean that Sir Owen has thereby waived his right to insist that Mr Miller does not talk to the defendants before the trial about such matters.”

Howard Elgot Parklane Pooleton Chambers  
PNLA March 2026

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Therefore refuse permission to the opposing party?

Perhaps.

- Let us assume that we reach trial without having granted permission for the opposing party to interview the witness, but neither are we calling the witness to give evidence at trial. The opposing party might rely upon *Wisniewski v Central Manchester H A* 1998 PIQR P324, 340 to ask the court to draw adverse inferences against us.

The *Wisniewski* principle was restated by Geraint Webb KC, sitting as a judge of the High Court in *HQA v Newcastle-Upon-Tyne Hospitals NHS Foundation Trust* 2026 PIQR P1 in which I acted




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**Wisniewski**  
 “(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.  
 (2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

- (3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
- (4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified”.



Howard Elgot Parklane Fowden Chambers  
 P1&A March 2026

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**Civil Justice Council Interim Report and Consultation on Use of AI in Preparing Court Documents**

- “Artificial Intelligence is a tool that carries with it risks as well as opportunities. Its use must take place therefore with an appropriate degree of oversight, and within a regulatory framework that ensures compliance with well-established professional and ethical standards if public confidence in the administration of justice is to be maintained.”

Dame Victoria Sharp P, in *Ayinde v The London Borough of Haringey* [2025] EWHC 1383 (Admin) at [2]

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## AI Witness Statements - Not For Trial

- "Provided the document bears the name (or firm name?) of the legal representative who is taking professional responsibility for its preparation, there is no need for any (further) rules relating to these non-trial witness statements."



Howard Egge Partners PwC/Charters PMA March 2020

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### Trial Witness Statements PD 57AC - Business and Property Courts

- "Proposal: It is difficult to see that the aims and objectives of PD57AC in the legally represented context can properly be met if AI is used, other than for non-text generating purposes, in the process of drafting witness statements covered by that rule. With this in mind, we consider that a rule requiring a declaration that AI has **not** been used for the purposes of generating the content of such a statement (including by way of altering, embellishing, strengthening, diluting or rephrasing the witness's evidence) would be consistent with the aims of the Practice Direction and reinforce the importance of witness statements being in the witness's own words."

Howard Egge Partners PwC/Charters PMA March 2020

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### Trial Witness Statements Under CPR Part 32 (not covered by PD57AC)

- "...we believe that for the same reasons as set out above in relation to PD 57AC, if AI has been used, other than for transcription, then Part 32 should be amended to include a requirement that, along with the statement of truth, the relevant legal professional must include in the witness statement a declaration that AI has **not** been used for the purposes of generating its content (including by way of altering, embellishing, strengthening, diluting or rephrasing the witness's evidence)."

Howard Egge Partners PwC/Charters PMA March 2020

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**James Malam –  
Exchange Chambers**

*“Update on Limitation”*

# James Malam



Call 2002



## Clerks

 Joe Mawson  
 0161 817 2753

 Chris Brown  
 0161 817 7146

 Prya Anisa  
 0161 817 2794

## Memberships

- Professional Negligence Bar Association
- TECBAR
- Chancery Bar Association
- Northern Circuit Commercial Bar Association

## Education

- Judicial Assistant to the Court of Appeal, 2007
- Bar Vocational Course, Nottingham Law School, Very Competent, 2002
- Lord Justice Holker Award, Gray's Inn, 2001
- LLB (Hons) Law, University of Sheffield, 2001
- Plessington High School, Wirral, 1991-1998

## Overview

James has a busy practice and extensive experience advising and representing multinational, national and small business in relation to commercial, construction, professional negligence and insurance disputes. He represents clients in arbitrations and substantial High Court trials and applications, against silks and juniors, and has appeared alone and led on numerous occasions in the Court of Appeal.

James is regularly recommended in a number of areas in both the main legal directories and frequently wins praise for his advocacy, which is described as “strong”, “strategic and poised” and “formidable”; his written work, which is described as “clear and robust”, “very well written” and “sensible”; and his general approach, which is described as “commercial and client-friendly”, “technically sound” and “effective, sensible, pragmatic and easy to deal with”.

James has appeared in a number of printed cases, which are described more fully in the specialism sub-pages to the left:

Elston v. King [2020] Pens. L.R. 16 (on appeal), [2018] B.P.I.R. 1281 (first instance);

Liddle v. Liddle [2019] B.P.I.R. 947 (on appeal), [2017] B.P.I.R. 1538 (first instance);

Re Mascal (Deceased) [2019] 1 P. & C.R. DG15;

Whaleys (Bradford) Ltd v. Bennett [2017] 6 Costs L.R. 1241;

Peaktone Ltd v. Joddrell [2013] 1 W.L.R. 784, [2013] 1 All E.R. 13;

Parry v. Bartlett [2012] B.C.C. 700;

Teasdale v. HSBC Bank PLC [2012] 3 Costs L.O. 285 (on appeal),  
[2010] 4 All E.R. 630 (first instance);

Carey v. HSBC Bank PLC [2010] Bus. L.R. 1142

## Recommendations

“He brings a proactive approach by anticipating problems and, more importantly, providing solutions for them.”

**Chambers and Partners 2026, Commercial Dispute Resolution**

“James Malam is very good with clients – calm and collected.”

**Chambers and Partners 2026, Construction**

“James is excellent all around – he can tackle the most complex of factual and legal issues and fills you with confidence when on his feet in court.”

**Chambers and Partners 2026, Construction**

“James is very good to work with, providing extremely good analysis of complex issues.”

**Chambers and Partners 2026, Professional Negligence**

“James is very cool and calm as well as good with clients.”

**The Legal 500, 2026, Property and Construction**

“James is great. He is really, really good on the technical side and successfully gets it down in writing.”

**Chambers and Partners 2025, Professional Negligence**

“James is very good on his written arguments and on his feet.”

**Chambers and Partners 2025, Commercial Dispute Resolution**

“James is a real star who is technically good, commercial and a real gem to work with.”

**Chambers and Partners 2025, Commercial Dispute Resolution**

“James Malam is very well prepared and has an effective approach.”

**Chambers and Partners 2025, Construction**

“James is clever and considered with a great understanding of civil litigation. He is very good to work with, as well as co-operative and constructive, pragmatic and efficient, and his written work is clear and precise.”

**The Legal 500, 2025, Commercial Litigation**

“James has an eye for detail and has incredible knowledge of what is a complex and specialised area of the law in construction, as well as being adept at dealing with commercial disputes more generally. His written work is always very thorough, and on his feet, he is robust and skilled, both in cross-examination and submissions.”

**The Legal 500, 2025, Property and Construction**

“James Malam has dealt with a number of cases for us at all stages and has always been easy to communicate with, provided excellent and practical advice, and shown an ability to present complex matters in a clear and concise manner in court.”

**Chambers and Partners 2024, Construction**

“All the work James produces is very well written, he sets the arguments clearly and is a good strong advocate. He is low-key, effective, sensible, pragmatic and easy to deal with.”

**Chambers and Partners 2024, Construction**

“James Malam is technically sound, accessible, thorough, reliable and commercial.”

**Chambers and Partners 2024, Construction**

“He sets the arguments clearly, and is a good strong advocate, who is sensible and easy to deal with.”

**Chambers and Partners 2024, Professional Negligence**

“He’s very helpful; he gets a grip of things really quickly and gives us a steer on the direction we need to go in. He is very accessible.”

**Chambers and Partners 2024, Professional Negligence**

“James is calm under pressure. His advocacy is strategic and poised.”

**The Legal 500, 2024, Professional Negligence**

“James is excellent at spotting the important details and utilising these to the benefit of the client, and on a number of occasions he has spotted issues which have been vitally important. He takes a very considered approach to advocacy, he explains clearly and concisely his points and their relevance, and in contrast to many of his opponents, he does not need to be questioned by judges to elaborate on or explain his arguments.”

**The Legal 500, 2024, Commercial Litigation**

“A detail-orientated junior who is serene under pressure. He takes a measured approach to advocacy.”

**The Legal 500, 2024, Property and Construction**

“James has an excellent knowledge of the area. He is very thorough with a keen eye for detail, a sensible approach to pleading and the ability to ‘think outside the box’. He provides practical solutions when problems arise.”

**Chambers and Partners 2023, Construction**

“James is a really good lawyer: technical, commercial and straight-talking.”

**Chambers and Partners 2023, Construction**

“James is extremely diligent with personable manner, is good to work with and is a formidable advocate. He is not afraid of hard work and regularly hits time deadline. He’s definitely a safe pair of hands.”

**The Legal 500, 2023, Professional Negligence**

“James Malam is client-friendly, very good technically, commercially minded when dealing with litigation, and is always very well prepared.”

**Chambers and Partners 2022, Construction**

“He is calm and able to get to the crux of the issues. He has good cross-examination skills.”

**Chambers and Partners 2022, Professional Negligence**

“Strong technical advice, clear and robust drafting of pleadings, incisive and effective advocacy. Also very easy and pleasant to work with, and prepared to give an off-the-cuff view if asked and to work through the wider strategy of a claim with us. Understands the requirements and priorities of insurer clients”

**The Legal 500, 2022, Professional Negligence**

“James is quick to identify the key issues and gets to grips with the case within a short period of time, performing well at trial.”

**The Legal 500, 2022, Commercial Litigation**

“James was organised and effective in presentation of our client’s case. He presented it with clarity and persuasion, both on paper and on his feet. He was calm and reassuring to work with.”

**Chambers and Partners 2021, Construction**

“Very good on paper, with clear and forceful pleadings. Just as good before the court. Always feel in safe hands with James on determining the key technical points, putting forward our best case on them.”

**The Legal 500, 2021, Professional Negligence**

“Technically sound, accessible, thorough, reliable and commercial.”

**The Legal 500, 2021, Property and Construction**

“Technically sound, accessible.”

The Legal 500, 2021, Commercial Litigation

“He is very commercial and client-friendly.”

Chambers and Partners 2020, Construction

“He is very good with clients and puts them at ease.”

Chambers and Partners 2020, Construction

“Technically sound and accessible.”

The Legal 500, 2020, Commercial, Banking, Insolvency and  
Chancery Law

“Technically sound, accessible, thorough, reliable and commercial.”

The Legal 500, 2020, Construction, Planning and Environment

“Supportive and thorough.”

The Legal 500, 2018/19, Commercial, Banking, Insolvency and  
Chancery Law

“He has a keen eye for the key issues of a case.”

The Legal 500, 2018/19, Construction, Planning and Environment

“Knowledgeable and meticulous.”

The Legal 500, 2017, Commercial, Banking and Insolvency.

“A strong advocate, who provides sensible and pragmatic advice.”

The Legal 500, 2016, Commercial, Banking and Insolvency.

“His courteous and helpful manner enables him to readily deal with  
even the most difficult of clients.”

The Legal 500, 2015, Commercial, Banking and Insolvency.

“Has a sound grasp of the technicalities of a legal problem.”

The Legal 500, 2015, Construction, Planning and Environment.

“Understands the need for commercial cost-effective solutions”

The Legal 500, 2014, Construction, Planning and Environment.

“He has a swift grasp of the key issues in his cases”

The Legal 500, 2014, Commercial, Banking and Insolvency.

Recommended for professional negligence work

The Legal 500, 2013, Chancery and Commercial.

“Quick to grasp the strengths and weaknesses of a case”.

The Legal 500, 2012, Chancery and Commercial.

“Very careful, easy to work with and bright’...has a practice that is ahead of his call”

The Legal 500, 2011, Chancery and Commercial.

## Beyond the Bar

James enjoys reading, photography, cycling, swimming, food and drink and spending time with his family.



## James Malam

- *"James is very good to work with, providing extremely good analysis of complex issues"* **Chambers and Partners 2026, Professional Negligence**
- *"James is excellent all around – he can tackle the most complex of factual and legal issues and fills you with confidence when on his feet in court."* **Chambers and Partners 2026, Construction**
- Recommended in Chambers and Partners 2026 for Professional Negligence; Commercial Dispute Resolution; and Construction
- Recommended in the Legal 500 2026 for Professional Negligence; Commercial Litigation; and Property and Construction

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## Subcontracting The Professional's Duty: When Will The Professional Be Liable For Another's Lack Of Skill And Care?

James Malam

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## The Problem

- A professional contracts to make an application on behalf of a client to permit the connection of electrical equipment to the local grid.
- Unsurprisingly, the application form requires some technical information about the electrical performance of the equipment. This is outside the expertise of the professional, who is a surveyor and land agent.
- The surveyor says that he relied on the advice of a third-party electrical engineer in completing the form.

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## The Problem (Cont'd)

- If the form is completed in accordance with the engineer's advice, but that advice is negligently wrong, is the surveyor liable to the client for breach of duty?
- What if the advice given by the engineer is informal?
- What if the surveyor has not told the client beforehand (or at any point until filing its Defence) that it relied upon the engineer's advice?

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## Cooperative Group Limited v. John Allen Associates Limited

- Reported at [2010] EWHC 2300 (TCC)
- JAA were engaged to act as engineers for the construction of a supermarket in Sandwich. The ground had limited bearing capacity.
- JAA consulted well known geotechnical engineering subcontractors (Keller) for specialist advice about what should be done. That advice was provided on an informal and unpaid basis and someone other than Keller was engaged to carry out the ground improvement work.
- In the event, the Co-Op's claim failed because its central complaint (that the method of ground stabilisation advised by JAA would never have worked) was rejected.

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## Cooperative Group Limited v. John Allen Associates Limited (Cont'd)

- However the court accepted (obiter) JAA's argument that it discharged its duty of care by relying on Keller's advice.
- Ramsey J. set out the following propositions:
- (1) Obtaining advice or a design from a 3<sup>rd</sup> party does not divest a professional of their duty in respect of that advice or design.
- (2) But that duty can be discharged by relying on the advice or design of a specialist provided the professional acts reasonably in doing so.
- "(3)...in determining whether construction professionals act reasonably in seeking the assistance of specialists to discharge their duty to the client, the court has to consider all the circumstances which include:  
(a) Whether the assistance is taken from an appropriate specialist;

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## Cooperative Group Limited v. John Allen Associates Limited (Cont'd)

- (b) Whether it was reasonable to seek assistance from other professionals, research or other associations or other sources;
  - (c) Whether there was information which should have led the professional to give a warning;
  - (d) Whether and to what extent the client might have a remedy in respect of the advice from the other specialist;
  - (e) Whether the construction professional should have advised the client to seek advice elsewhere or should themselves have taken professional advice under a separate retainer
- My view is that (i) the considerations in this area are the same regardless of the profession; (ii) considerations (d) and (e) are crucial, not merely matters to be taken into account.

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## Solicitors and Counsel

- Probably the other main area where this issue arises.
  - (1) In general, a solicitor is entitled to rely upon the advice of counsel properly instructed.
  - (2) For a solicitor without specialist experience in a particular field to rely on counsel's advice is to make normal and proper use of the Bar.
  - (3) However, he must not do so blindly, but must exercise his own independent judgment. If he reasonably thinks counsel's advice is obviously or glaringly wrong, it is his duty to reject it" (Locke v Camberwell HA [2002] Lloyd's Rep. P.N. 23 at 23).
- But counsel is usually (always?) identified and known to the client and owes the client a duty of care.

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## Moresk Cleaners Ltd v. Hicks

- [1966] 2 Lloyd's Rep 338
- Architect appointed to design and administer construction of a warehouse. The architect invited a potential contractor to carry out the design of the structure, and the architect merely approved or adopted their design. That design was defective.
- The architect argued he wasn't liable because it was an implied term that the architect was entitled to delegate specialised design tasks to specialist sub-contractors. The court concluded: "if a building owner entrusts the task of designing a building to an architect he is entitled to look to that architect to see that the building is properly designed. The architect has no power whatever to delegate his duty to anybody else, certainly not to a contractor who would in fact have an interest which was entirely opposed to the building owner"

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## Moresk Cleaners Ltd v. Hicks (Cont'd)

- The architect also argued there was an implied authority as the employer's agent to employ the contractor to carry out the design.
- Again the court disagreed: *"if the defendant was not able, because this form of reinforced concrete was a comparatively new form of construction, to design it himself he had three courses open to him. One was to say: "this is not my field". The second was to go to the client, the building owner, and say: "this reinforced concrete is out of my line. I would like you to employ a structural engineer to deal with this aspect of the matter". Or he can, while retaining responsibility for the design, himself seek the advice and assistance of a structural engineer, paying for his service out of his own pocket but having at any rate the comfort [that] the person whom he employed will owe the same duty to him as he, the architect, owes to the building owner"*

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## Moresk Cleaners Ltd v. Hicks (Cont'd)

- Note this seems more restrictive than the position for solicitors (per Locke v Camberwell HA).
- In Locke the solicitor can in principle discharge their duty by reliance on counsel, even in an area in which (s)he has some expertise him/herself.
- In Moresk, even where the matter is outside (here) the architect's expertise, it seems the professional must disclaim this aspect of the work and get the client to consult someone else.

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## Merton LBC v Lowe

- [1981] 18 B.L.R. 130
- An architect was appointed to design and administer the construction of a swimming pool. Their design provided for a proprietary cementitious ceiling treatment, named 'Pyrock'. Pyrock Ltd quoted for the works and stipulated that 3 coats of material should be applied to the ceilings, two coats of standard render the mix of which they specified, and a final coat of Pyrock, the mix of which was secret.
- Pyrock carried out their works as nominated sub-contractor to the building contractor. Several years after completion the Pyrock cracked and had to be removed. The reason for this was that the Pyrock was too 'strong' a mix to be applied to the two undercoats which Pyrock had stipulated.
- The treatment of the architect's argument it was entitled to rely upon Pyrock was again obiter. Further only Waller LJ dealt with it.

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## Merton LBC v Lowe (Cont'd)

- The council argued that the architect was liable for the unsuitability or faulty design of the Pyrock, as it was responsible for the design of the building, and had specified Pyrock.
- Waller LJ. approved *Moresk*, but distinguished it, saying "*this case was different. Pyrock were nominated sub-contractors employed for a specialised task of making a ceiling with their own proprietary material. It was the defendants' duty to use reasonable care as architects. In view of successful work done elsewhere, they decided that to employ Pyrock was reasonable. No witness called suggested that was not reasonable at the beginning*"
- Arguable this largely approximates to the 2<sup>nd</sup> option in *Moresk* (though Waller LJ. did not say that).

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## Investors in Industry Commercial Properties Ltd v. South Bedfordshire District Council

- [1986] 1 All E.R. 787 CA.
- A series of warehouses was built on a (very large) old swimming pool. Trial pits were dug to investigate the bearing capacity of the ground, whereas only boreholes were adequate to do so. The warehouses settled significantly shortly after construction and had to be demolished.
- The owners sued the local council for failing properly to perform its building inspection function. The council commenced third party claims against the structural engineer and architect, but discontinued against the engineer, who had no insurance.
- The claim against the council failed, so the Court's judgment in relation to the architect was again obiter.

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## Investors in Industry Commercial Properties Ltd (Cont'd)

- The architect was alleged to be liable because it had said the engineer's drawings showing the foundations "*appear to be in order*" when it knew of the made ground; knew that boreholes had not been dug; and (it was alleged) knew that trial pits were of no use.
- The Court concluded that, with a caveat, cl.1.22 of the architect's appointment absolved it of liability for the engineer's work. Cl.1.22 said "*The architect will advise on the need for independent consultants and will be responsible for the direction and integration of their work but not for the detailed design, inspection and performance of the work trusted to them*".

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## Investors in Industry Commercial Properties Ltd (Cont'd)

- The caveat is that in the CoA's view *"If any danger or problem arises in connection with the work allotted to the expert, of which an architect of ordinary competence reasonably ought to be aware and reasonably could be expected to warn the client, despite the employment of the expert...he is not entitled to rely blindly on the expert..."*
- So even where the professional has contracted out of a duty to take care that the 3<sup>rd</sup> party's advice is correct, if they ought to realise there is a risk regarding that advice they are obliged to bring that risk to the client's attention.

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## The Client's Claim Against the Third Party

- In *Williams v. Natural Life Health Foods [1998] 1 W.L.R. 830* the House of Lords considered whether a duty had been assumed personally by the director of a company. Lord Steyn said that whether there has been an assumption of duty is to be assessed objectively and *"...the primary focus must be on exchanges (in which term I include statements and conduct) which cross the line between the defendant and the plaintiff"*.
- If the client is unaware the 3<sup>rd</sup> party has been consulted, it would appear unlikely the 3<sup>rd</sup> party will owe the client a duty.

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## The Client's Claim Against the Third Party (Cont'd)

- In *Henderson v. Merrett Syndicates Ltd [1995] 2 A.C. 145* Lloyd's Names had contracted with 'members agents', who in turn contracted with 'managing agents' to manage a Lloyd's syndicate. The House of Lords concluded that the managing agents owed the Names a duty. But it said that *"I strongly suspect that the situation...in the present case is most unusual; and that in many cases in which a contractual chain comparable to that in the present case is constructed it may well prove to be inconsistent with an assumption of responsibility which as the effect of, so to speak, short circuiting the contractual structure put in place by the parties"*

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## Conclusions

- There is no obvious reason why these principles should apply only to construction professionals (or only to defective foundation claims!). Similar principles apply to solicitors. Although the cases suggest differences between the two professions, that is probably a quirk of expression or of the facts giving rise to reported cases.
- Other than *Co-Op v. John Allen*, none of the cases support the idea that a professional can discharge their liability in reliance on advice in respect of which the client has a remedy against someone else.
- If the client is not at least informed of the reliance on the third party, it would seem unlikely the 3<sup>rd</sup> party will owe a duty of care. It is therefore questionable whether the professional will have discharged their duty.

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Thank you!

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**Catherine Shuttleworth**  
**Partner**  
**Kennedys**

*“Wins for solicitors: assumptions of responsibility,  
loss of a chance and breach of trust”*

# Kennedys

Catherine Shuttleworth

Partner

Leeds



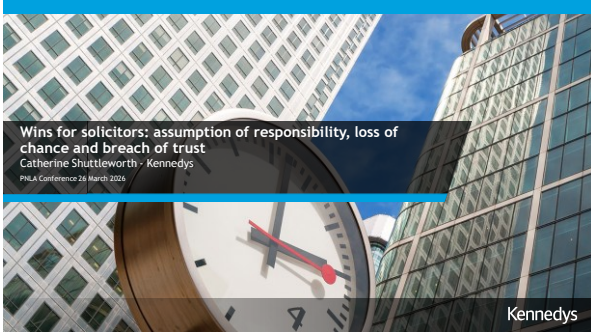
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Catherine joined Kennedys in 2003 and has been a partner in the insurance division for 17 years. After working in London for nearly 20 years, she moved back to Leeds in 2023 to establish the, now growing, professional liability practice in that location. She has over 35 years of experience in advising insurers and their insureds in professional negligence claims.

Catherine has extensive experience acting in a broad range of professional indemnity practice areas but principally solicitors, accountants, surveyors, insurance intermediaries and insolvency practitioners. She regularly advises insurers on coverage in respect of high quantum disputes.

Catherine has acted for a number of high-profile and top-ranking firms of solicitors in a range of disputes.



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**Agenda**

Trends in Solicitors Negligence Claims	4
Assumption of Responsibility - Scope of Duty	6
Loss of a Chance	12
Breach of Trust in Conveyancing Fraud	18
Suing the Correct Entity - Guidance	21

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## Scope of Duty

Questions to Consider

- What was the solicitor retained to do?
- What were the terms of that retainer?
- Did the solicitor breach those terms?
- If so, what loss flows from that breach of duty?

BUT:

- What if there is no retainer?

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## Pushing the scope of duty boundary: examples

- Allegation that a solicitor who failed to advise of the need to obtain shareholder approval for the sale of property by a company to its 50% shareholder, owed a duty to advise of the risk that the other shareholder could bring an unfair prejudice claim. All losses claimed related to the UP claim.
- Solicitor instructed to assist in sending a letter to the Claimant's employers intended to "force" negotiations for resolving a dispute over his bonus entitlement. Employer reacted to letter by claiming that the relationship of trust and confidence had broken down and dismissed him. The claim alleges that the solicitor should have foreseen this outcome and advised on alternative negotiation options.

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## Miller v Irwin Mitchell LLP

[2024] EWCA Civ 53

- Personal injury - May 2014 - fall and broken leg, eventually amputated
- Tour operator failed to notify liability insurer - no cover. Subsequently entered into administration
- Free helpline advice in May 2014 - generic about personal injury claims, including 3 limitation period. No advice given re notifying tour operator.

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## Miller v Irwin Mitchell LLP

The Claim

- Irwin Mitchell entered into an express retainer with her in May 2014, alternatively an implied retainer and/or assumed a duty of care to her. In breach of that duty they failed to advise her in May 2014 or April 2015 to notify the tour operator
- Did Irwin Mitchell assume a duty of care to advise the Claimant as alleged?
- No - until 2016 the Claimant was only a prospective client. No obligation to advise the Claimant to inform the tour operator of the accident prior to inception of their retainer in January 2016 - too late by then.

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## Niprose Investments Limited & others v Vincents Solicitors

[2024] EWHC 801 (Ch)

- Investor funded student accommodation property investment scheme in Liverpool. High "deposits" paid to fund development; £7m+ in total.
- Developer enters insolvency, construction not completed, property sold for £4m, leaving £3m shortfall / investor loss.
- Investors bring claim against conveyancing solicitors. Solicitors apply for strike out - retainer excluded advice on wisdom of investing or risks of advance payments.
- Court allowed Claimants opportunity to amend to address defective pleadings including pleading to the specific *"characteristics of the claimants... which tend to show ... that they were financially unsophisticated"*.

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### Principles of “loss of chance”

- Things Claimant would have done X: assessed “yes” or “no” on the balance of probability
- Things another would have done:
  - Minimum “real and substantial chance”
  - Percentage applied from 10% to 100%
- Independent actions of multiple other persons: multiply!



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### Milford Investments Ltd v Lanyon Bowdler LLP

[2024] EWHC 3227 (Comm)

- CI developer agreed to enter into JV with owner of land for development. Agreements entered into prior to incorporation of JV LLP. Enforceability of agreements disputed. Owner of land withdrew from JV and sold the land, which was subsequently developed. Claim: negligence of solicitors in respect of the agreements caused loss: £2 million development profit.
- Judge:
  - Liability established: negligent failure to ensure agreements were executed pre LLP
  - Unenforceability of agreements allowed the owner to withdraw from the JV and sell the land - loss established

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### Milford Investments Ltd v Lanyon Bowdler LLP

Evaluation of the Lost Chance

- Quantum expert evidence: profit would have been £1.2 million
- 80% chance Claimant developer would have secured funding
- 40% chance owner would have cooperated with development
- $40\% \times 80\% = 32\%$  loss of chance
  
- Damages: £1.2 million  $\times$  32% = £389,330 (only 18% of claim)

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## Barrowfen Properties Ltd v Patel (1) Stevens & Bolton LLP (2)

[2025] EWCA Civ 39

- Property development scheme frustrated by conduct of Mr Patel and negligence of solicitors
- C alleged that but for the negligence it could have pursued original development scheme in:
  - Starting in 2015 and completing August 2016 - £4.8m loss (counterfactual 1) or
  - Starting 2016 and completing December 2017 - £3.5m loss(counterfactual 2)
- Instead C completed revised scheme in 2021
- Revised scheme generated £2.5m more developer profit than original scheme would have

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## Barrowfen continued...

- Counterfactual 1: 60% chance (40% discount)
- Counterfactual 2: 32% chance (80% x 40%) (68% discount)
- Chance of C not successfully pursuing one of counterfactuals = 8% (60% + 32%)
- Why offset £2.5m first then apply discount?
  - Apply offset first:  $(10m - 2.5m) \times 92\% = £6.9m$ .
  - Apply discount first:  $(10m \times 92\%) - £2.5m = £6.7m$
  - The £200,000 difference = 8%

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## “Dreamvar”

*P&P Property v Owen White & Catlin LLP & Anr; Dreamvar (UK) Ltd v Mishcon de Reya & Anr* [2018] EWCA

- Imposter seller → completion a nullity
- Seller/buyer solicitors:
  - **breach of trust**: no authority to pay away money, no relief under s61 Trustee Act 1925 (*honest/ reasonable/ fair*)
- Seller solicitors possibly:
  - **breach of warranty** that their client was the true owner, if “reliance”
  - **breach of undertaking** not to release money other than upon completion (Law Society Code for Completion by Post)

No authorities granting s.61 relief in conveyancing frauds.

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## *Social Money Limited v Atwells Solicitors LLP*

[2024] EWHC 3288 (Ch)

- Lender/borrower, clear identity fraud
- Lender sought summary judgment against borrower’s solicitors for **breach of trust and breach of undertaking**
- Judge rejected application:
  - Undertakings were bespoke and interpretation disputed: matter for trial
  - What had been undertaken impacted on whether there was a breach of trust

Some hope against automatic liability?

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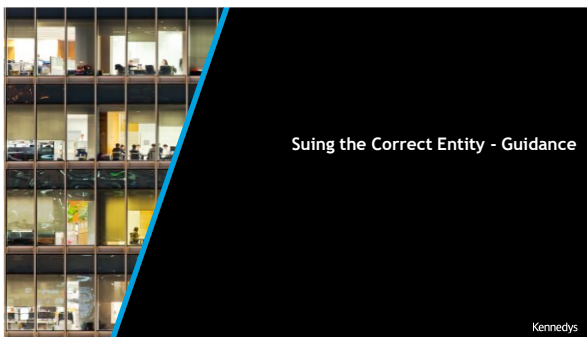
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## Successor Practice Rules

- Distinction between:
  - Successor Practice Rules in Minimum Terms of Professional Indemnity = enables identification of the Insurer liable to indemnify the claim
  - Entity legally liable to the Claimant = the entity which existed at the time the cause of action arose:
    - Partnership - PD7A.3 CPR - sue in the name of the partnership at the time the cause of action accrued
    - LLP/Co - usual rules apply

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## Leggett and others v AIG

[2025] EWHC 278 (Comm)

- 2 Glambrone entities: Partnership and LLP both insured under AIG's Policy
- Claimants instructed the Partnership to act on purchase of off-plan holiday homes in a development in Calabria which failed
- Proceedings issued against Partnership and LLP. Partnership claim struck out in default of service
- Judgment entered against the LLP. Damages assessed at c. £3m
- Entity liable for negligent advice giving rise to the loss was the Partnership

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## Leggett and others v AIG

The Claim against AIG

Claim for indemnity for the damages issued against AIG under TP(RAI) Act 2010

- Indemnity declined on the basis that the entity which was liable for the damage was the Partnership not the LLP against which judgment had been entered.
- The Decision:
  - The entity responsible for the causative breach of duty was the Partnership
  - Whilst the policy provided cover for both the Partnership and the LLP, it did not magically have the effect of transferring liability from one entity to the other to effect an indemnity for the LLP in respect of liabilities of the Partnership

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**Gemma Horner – Partner – Levi Solicitors  
& Chris Makin FCA FCMi FAE QDR  
MCI Arb – Forensic Accountant**

*“Tips & Traps instructing Experts”*



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Gemma Horner is a partner in the Dispute Resolution team at Levi Solicitors LLP. She is the North East PNLA Joint Representative.

Gemma's practice encompasses a broad spectrum of litigation matters with particular emphasis on professional negligence work and property disputes.

Gemma has successfully brought claims for negligence against solicitors and barristers arising from a range of underlying instructions including administration of a deceased's estate; representation provided during conveyancing transactions; advice provided regarding recovery of commercial rent arrears; representation in personal injury claims; and commercial property investments.

Gemma has also successfully represented clients in professional negligence claims against surveyors, developers, builders and accountants.

Gemma regularly acts for clients in claims where there are multiple parties and has a keen attention to detail that enables her to quickly understand the issues in dispute and focus on a resolution. Gemma provides clear, straightforward advice, assisting clients to find a way forward to bring disputes to a conclusion.

Gemma achieved an LLB in Law and an LLM in International Commercial Law from Northumbria University. Gemma obtained her Civil Advocacy Higher Rights of Audience in 2022 and is a Solicitor Advocate.



## **Chris Makin FCA FCMI FAE QDR MCI Arb**

Forensic Accountant

E: [chris@chrismakin.co.uk](mailto:chris@chrismakin.co.uk)

T: 01924 495888

began his career in Leeds in general practice before specialising in forensic accounting, mediation and expert determination. He grew his own practice, became a partner in a regional practice and then an international practice, gaining vast knowledge and experience over the past five decades.

Now practising from his home in West Yorkshire and rooms in London, Chris works on legal cases that require his extensive expertise.

Starting his chartered accountancy career working for a two-partner practice, Chris eventually took over as a sole practitioner and grew to 18 staff. He then merged the practice with a West Yorkshire practice which in turn merged with an international practice with 250 partners.

Here, he developed his team of forensic accountants, which he took with him when starting the Leeds office of another national firm, growing that into a full service office as managing partner and then national litigation head.

<https://chrismakin.co.uk/about/>

# **N Christopher Makin FCA FCMI FAE QDR MCI Arb**

## **Curriculum Vitae**

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West Yorkshire	Tel 01924 495888	Gray's Inn
	Fax 01924 494421	London
www.chrismakin.co.uk	Mob 07887 660072	WC1R 5AH
chris@chrismakin.co.uk	DX 29648 Mirfield	DX 283 London Chancery Lane

## **Qualifications and Accreditations**

Fellow of the Institute of Chartered Accountants in England and Wales. Admitted 1968, fellow 1979

Fellow of the Academy of Experts, Practising. Admitted 1990, fellow 1994

Qualified commercial mediator (Member of Faculty, Academy of Experts) 1998

Fellow of the Chartered Institute of Management 1984

Member of the Chartered Institute of Arbitrators 2006

\*One of the first 23 to become Accredited Expert Witness & Forensic Accountant, ICAEW, Dec 2009

\*One of the first 5 to become Accredited Expert Determiner, The Academy of Experts, Dec 2009

## **Past and Present Positions**

Partner or Principal in the international firm of Mazars Neville Russell or predecessor firms continuously from April 1971 to October 1998

Partner in the national firm of Bentley Jennison 1998 to 2003, latterly National Head of Litigation

Consultant to Bentley Jennison, litigation support & mediation, October 2003 to March 2006

Freelance forensic accountant, expert witness, mediator and expert determiner as Chris Makin Mediator Ltd, April 2006 to date

Director, College of Mediators, April 2021 to date

## **General Practice Experience**

Accountancy, audit, taxation and general business advice, wide variety of clients from 1971 to 1989

Support member, or confidential counsellor, for chartered accountants with ethical problems  
“Lifetime Achiever” finalist, West Yorkshire Society of Chartered Accountants

## **Mediation Experience**

Acted as mediator in 100 cases: partnership, director, share valuation, company sale & purchase, Section 994, construction, rights of way & boundaries, defamation, intellectual property, professional negligence, business interruption, housing disrepair, employment & many kinds of contract disputes

Frequent lecturer on mediation matters; trained in time limited and advanced mediation techniques

Participated in mock mediations to demonstrate power of mediation to judges, barristers & solicitors

## **Litigation Support Experience**

Involvement in both civil and criminal matters since 1989, covering the following areas:

- Loss of profit and consequential loss
- Business & share valuations
- Matrimonial valuations
- Partnership disputes
- Professional negligence
- Criminal & commercial fraud investigations
- Personal injury & fatal accident
- Drug trafficking etc asset tracing & confiscation

Attendance at court & meetings of experts. Many appointments as SJE. Given expert evidence about 100 times

Expert determinations appointed by the Court, by the parties, & by President of the Institute of Chartered Accountants in England & Wales. About 30 ED cases undertaken to date

### **Publications, Lectures, Committee work**

Past contributor to Kemp & Kemp “The Quantum of Damages”, and author of a chapter in that work on quantification of loss of profits for the self-employed and family businesses

Frequent lecturer to professionals and writer for professional journals

Past member, Forensic Special Interest Group committee, ICAEW. Past member, Support Member Steering Group, ICAEW. Member, Ethics Advisory Committee, ICAEW. Member, Investigations Committee, The Academy of Experts

Assessor for higher level qualifications, The Academy of Experts

### **Experience especially relevant to various assignments**

Please see the following extract from my website for examples of my work.

<http://www.chrismakin.co.uk/forensic-accountancy.html> :-

### BUSINESS INTERRUPTION

Great experience in valuing businesses and business interruption claims over 25 years

Deep understanding of business, based on my acting for hundreds of clients as a general practitioner, on building four accountancy practices from scratch or almost, and on writing the chapter in Kemp & Kemp which is of much wider application than personal injury claims

Acted for claimants and defendants/ insurance companies, in broadly equal measure

Given expert evidence frequently at RCJ, Commercial Courts, arbitrations, and public enquiries. “Hot-tubbing” experience

### COMMERCIAL DISPUTES AND MEDIATION

Thorough understanding of business, having built four accountancy practices from scratch and acted for hundreds of businesses, from sole traders to PLCs

Experience in valuing a wide range of different businesses

As an experienced commercial mediator, can always appreciate both sides of a dispute

Trained in SJE report writing

Written at least 200 forensic and valuation reports in the last 5 years

Given evidence about 100 times before judges at RCJ and other courts, at public enquiries, and in chambers

### SPA and IT EDs

I have had experience of IT management, being the partner in charge of IT when I had to set the strategy for the firm, then recruit and manage an internal and external IT department

I have performed many expert determinations on President’s appointment and direct appointment concerning SPA and professional partnership disputes

## POCA

A good understanding of POCA regulations

Written about 25 such reports in recent years

Trained in interview techniques in criminal cases

Given expert evidence in about 5 cases; recently at Croydon Crown Court, where a POCA application for £1.5million was reduced to £30k

## PERSONAL INJURY, CLINICAL NEGLIGENCE AND LOSS OF DEPENDENCY

See above: *Past contributor to Kemp & Kemp "The Quantum of Damages", and author of a chapter in that work on quantification of loss of profits for the self-employed and family businesses*

Written reports and given expert evidence for both claimants and defendant insurers in many cases of personal injury, fatal accident and clinical negligence cases over the last 30 years

## MATRIMONIAL

I have acted for many individuals in family proceedings, and given evidence before many forums, from District Judges in chambers up to High Court family judges at the RCJ and the Principal Registry

I have investigated several opposing parties, helped by the late-lamented *Hildebrand* which regretfully was overturned by *Imerman*, and helped achieve good settlements

I have written many reports as SJE, especially concerning the valuation of family companies

My articles published in the legal press are available on request

### **Business & share valuations**

Often the family company is the largest single asset to be taken out of the marriage by a spouse, and its value can be a large component of the matrimonial balance sheet. And it is seldom for sale, because the spouse who built it will wish, or need, to continue to operate it. Chris has vast experience of valuing family companies as party expert and, increasingly, as SJE, and can advise on tax-efficient ways of withdrawing them from the marriage.

Chris acted as shadow expert for the wife in a case where the spouses owned a specialist IT company half each. The company was making huge trading losses, but its intellectual property was of great interest to an American company. So the husband was in complex negotiations with the US buyers, whilst Chris was advising the wife's family lawyers on company sale & purchase and tax planning issues etc, in a way which would not spoil the negotiations. An order by consent was achieved, and the sale went through. A couple of years later the husband reneged on the deal, and the wife had to sue for the final instalments of the amount due to her. At the hearing, she won. The case is reported as *Wood & Rost* [2007] EWHC 1511 Fam, and the first paragraph of the judgment reads:

*"If Charles Dickens were alive today, the twists and turns of this litigation, conducted at vast expense, would provide him with ample copy for a 21st century sequel to Bleak House".*

Chris is also experienced at locating hidden assets and diverted businesses. In one case, a husband had an IT company which, as well as selling hardware, provided a range of maintenance, support and training services. Chris captured a print from his website when all such services were listed. He then inspected the husband's sales records, and found that regular income from many customers petered out. The husband contended that these services were no longer worth pursuing. Then a few months later, Chris captured a print from the website of the new girlfriend, who also had an IT company, and found that all the missing services were now listed on her web site. Quelle surprise! The husband very quickly reached a generous settlement with his ex-wife.

Husband and wife were equal shareholders in two companies. One company ran a big waste transfer company, and the other owned a huge quarry from which road gravel was

extracted. The wife's lawyer proposed that a fair division of assets should start with the husband taking the waste business and the wife taking the quarry. Chris saw this as a daft proposal, for where would the husband put his landfill, and how would the wife refill the quarry? Chris saw that there was a "marriage" between the two companies, and that they should not be "divorced". He valued the combined businesses, the husband took them out of the marriage, and a settlement was reached with the wife whereby she took the matrimonial home and other assets to balance. A clean break which suited both parties was achieved.

The wife had a rich daddy who paid for a forensic accountant to value the husband's businesses. That expert's opinion was a total value of £1million. Application was made to the court for this expert's report to be admitted, and permission was given provided that the husband could also instruct an expert. So Chris, acting for the husband, then valued the businesses, which had huge losses and pressing creditors, at £nil. Shortly afterwards, and whilst the matrimonial proceedings were part heard, the husband was forced to declare himself bankrupt, and all his businesses collapsed. This was the best possible demonstration that the £1million valuation was hopelessly optimistic.



# Tips and Traps when instructing Experts



Gemma Horner, Partner, Levi Solicitors LLP  
Chris Makin, Forensic Accountant

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## What we will cover

- Considerations before instructing an expert
- What to include in a letter of instruction
- What to do when you receive the expert report
- How to address issues with the report
- Consequences of getting it wrong




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## Before instructing an expert

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## Legal Framework

- Civil Evidence Act 1972
- CPR 35
- Practice Direction 35

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## Civil Evidence Act 1972

- S.3(1)

*"subject to any rules of court made in pursuance of this Act, where a person is called as a witness in any civil proceedings, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence" (emphasis added)*

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## CPR 35

- CPR 35.4(1)  
*No party may call an expert or put in evidence an expert's report without the court's permission*
- CPR 35.1  
*Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings (emphasis added)*
- CPR 35.3(1)  
*It is the duty of experts to help the court on matters within their expertise (emphasis added)*

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## Key considerations

- What is a relevant matter?
- What is reasonably required to resolve proceedings?
- When is an expert deemed to be qualified/what is within the expert's expertise?

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## Relevant Matter

- *Griffiths v TUI UK Ltd [2023] UKSC 48, Lord Hodge @ [36]*  
*"It is trite law that the role of an expert is to assist the court in relation to matters of scientific, technical or other specialised knowledge which are outside the judge's expertise by giving evidence of fact or opinion; but the expert must not usurp the functions of the judge as the ultimate decision-maker on matters that are central to the outcome of the case. Thus, as a general rule, the judge has the task of assessing the evidence of an expert for its adequacy and persuasiveness."*

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## Relevant Matter

- *Declan Colgan Music Ltd v UMG Recordings Inc [2023] EWHC 4 (Ch), Deputy Master Henderson @ [93]*  
*"There are a number of kinds of evidence which can be given by an expert witness, but which, on a more or less detailed analysis, is evidence of fact. I have in mind the following:*  
  
*(1) - Experts whose role is to educate the court in technical or scientific matters...In my view, ultimately, at least where the technology or science is not in doubt, such evidence would be evidence of fact, but that does not mean that it would not be expert evidence within the meaning of CPR 35. It would be expert evidence if it was not evidence which was capable of being given by a non-expert."*

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## Relevant matter

*(2) Cases where the expert draws on the general body of his knowledge and understanding in which he is an expert to give evidence as to a matter of observable fact...Where an expert relies on his own knowledge or experience but has no first hand knowledge of facts in question his evidence as to the facts may be admissible evidence of those facts and within CPR 35. Expert evidence in those circumstances could be classified as expert opinion evidence as to matters of fact.*

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## Relevant Matter

*(3) - Some cases where the expert collates and presents to the court in an efficient manner the knowledge of others in his or her field of expertise. This head may in some cases overlap with the immediately preceding one.*

*(4) - Cases where the identification or observation of particular facts is something which only a person with a particular skill is capable of doing...Without the expert's expertise, the fact would not be observable, hence the expert's expertise would be a necessary element of his giving evidence of this nature.*

*(5) – Evidence of foreign law*

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## Practical Point

- Identify contentious issues as soon possible and ideally prior to sending a letter of claim.
- Consider if the evidence you want the expert to give is technical or scientific or common knowledge such that expert evidence may not be required
- If not, can it be determined by lay witness evidence instead of expert evidence?
- Don't forget CPR 35.4 requires the judge's permission to rely on any expert evidence.

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## Reasonably required to resolve proceedings

- Kennedy v Cordia (Services) LLP [2016] UKSC 6, Lord Reed and Lord Hodge @ [44]

(i) whether the proposed skilled evidence will assist the court in its task;  
 (ii) whether the witness has the necessary knowledge and experience;  
 (iii) whether the witness is impartial in his or her presentation and assessment of the evidence; and  
 (iv) whether there is a reliable body of knowledge or experience to underpin the expert's evidence.

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## Reasonably required to resolve proceedings

- Bown v Gould & Swayne [1996] PNLR 130, LJ Brown @ 135

*"What solicitors should properly do in the very particular and highly individualistic circumstances of this case is by no means a matter of practice. It is a matter of law to be resolved by the judge.*

*Each of the seven respects in which the appellant's solicitor's first affidavit sought to contend that expert evidence would assist the court, proves, on analysis, to involve either a question of law or a question of fact.*

*I entirely share the view of the judge below...it would amount to no more than an expression of opinion by the expert either as to what he himself would have done, which could not assist, or as to what he thinks should have been done, which would have been the very issue for the judge to determine."*

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## Reasonably required to resolve proceedings

- Russell v Coulter [2025] EWHC 493 (KB), Saini J @ [33]

*"Although expert evidence may be required to resolve issues in some professional negligence claims, it is a general principle that a judge in a claim against a legal professional is well qualified, without any need of expert evidence, to assess the issue of negligence. In particular, a judge and not an expert can in this area of professional negligence determine the questions as to whether a barrister has discharged his duties with the requisite care and skill."*

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## Practical Point

- Think about the list of issues submitted before the CCMC.
- Will the proposed evidence assist the court to resolve any of those issues?
- Can the judge rule on the key issues without expert evidence?
- If expert evidence is required, what issues will the expert be asked to comment upon?

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## Qualified Expert

- CPR 35.3(1) It is the duty of experts to help the court on matters within their expertise
- Kennedy v Cordia (Services) LLP [2016] UKSC 6, Lord Reed and Lord Hodge @ [57]

*"It falls in the first instance to counsel and solicitors who propose to adduce the evidence of a skilled witness to assess whether the proposed witness has the necessary expertise and whether his or her evidence is otherwise admissible."*

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## Practical Point

- Obtain CVs from multiple experts before instructing to compare and contrast their experience.
- Do not entrust the task purely to a junior member of staff without oversight from the fee earner with responsibility.
- Enquire how many reports they have produced and how many times they have appeared in court.
- Consider if they have been involved in any reported cases – see *Marples v Secretary of State for Education* [2025] EWHC 2794 (Ch)  
"This is now at least the third time that Mr Cohen has been criticised for his role as an expert by the Court."

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## Instructing an expert

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## Expert Duties

- CPR 35.2  
This duty [to the court] overrides any obligation to the person from whom experts have received instructions or by whom they are paid.
- Kennedy v Cordia (Services) LLP [2016] UKSC 6 – Lord Reed and Lord Hodge @ [57]  
*“It is also their [counsel and solicitors’] role to make sure that the proposed witness is aware of the duties imposed on an expert witness.”*

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## Expert Duties

- CPR 35.10(1) An expert's report must comply with the requirements set out in PD 35
- CPR 35.10(2) At the end of an expert's report there must be a statement that the expert understands and has complied with their duty to the court
- CPR 35.10(3) The expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written
- CPR 35.10(4) The instructions referred to in paragraph (3) shall not be privileged against disclosure but the court will not, in relation to those instructions (a) order disclosure of any specific documents; or (b) permit any questioning in court, other than by the party who instructed the expert, unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under paragraph (3) to be inaccurate or incomplete

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## Letter of Instruction – what to include

- Concise summary of the factual background
- Relevant documents that have been, or will be, disclosed
- An explanation of what the expert is being asked to provide their opinion on
- A numbered list of specific questions for the expert to answer
- Any relevant deadlines

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## Letter of Instruction – what not to include

- Detailed explanations of the intricacies of the legal aspects of the case
- Information which is privileged or you do not intend to disclose
- Vague comments regarding the scope of evidence required
- Non-specific questions asking for a 'general opinion'
- *"Anything else which you feel may be helpful"*

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## Examples

- A long rambling letter going into the legal niceties of the case
- A request to provide a report on quantum, but then no evidence (such as annual accounts) on which quantum may be quantified
- Copies of annual accounts obtained from Companies House as though they are the crown jewels with everything needed, when micro accounts and small company accounts tell you virtually nothing – see my blog at <https://chrismakin.co.uk/companies-house-searches-are-useless/>
- An impossibly short deadline, in effect (though unsaid, of course!) calling on the expert to save the lawyer's skin on a case which they have been handling perhaps for years (it happens!)

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## Receiving the report

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## Check It!

- Is the factual background correct?
- Have the questions you asked been answered?
- Has the expert kept their opinion within their expertise?

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## Is the factual background correct?

Instructions  
*We are instructed that the Second Claimant's land was purchased as garden land*

Report  
*The Second Claimant owns a 0.32-hectare residential property, a Grade II listed former mill manager's house with gardens extending to the riverbank*

Difference - £80,000 diminution

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## Have the questions asked been answered? Has the expert stayed within their expertise?

**Instructions**  
Included a heading "Issues for you to address" with an introductory paragraph saying, "...In preparing the report we would ask that you address the following issues..."

**Report**

- Expert set his own questions
- Report includes sections commenting on the legal test for a duty of care, causation and foreseeability, including supporting case law

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## Addressing issues with the report

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## How to address issues?

- CPR 35.6(1)

A party may put written questions about an expert's report (which must be proportionate) to

- an expert instructed by another party or
- a single joint expert appointed under rule 35.7

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## How to address issues?

- CPR 35.6(2)

Written questions under paragraph (1)

- (a) may be put once only
- (b) must be put within 28 days of service of the expert's report; and
- (c) must be for the purpose only of clarification of the report, unless in any case
  - (i) the court gives permission; or
  - (ii) the other party agrees

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## How to address issues?

- CPR 35.6(3)

An expert's answers to questions put in accordance with paragraph (1) shall be treated as part of the expert's report.

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## How to address issues?

I have repeatedly come across cases where the rules under CPR 35.6 (1) & (2) have been broken:

- Repeated questioning in the hope that the other side may be able to get an opinion more helpful to their case out of your expert;
- Asked well after the 28 day time limit; and
- *Especially*, questions whose answers would require the expert to re-write large sections of the report, and even where your expert is asked to consider new evidence which he has never seen before.
- **MORAL**: Watch out for questions from the other side, and make sure they are being asked only within the rules

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## Consequences of getting it wrong

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## Revocation of permission to rely on expert evidence

- Marples v Secretary of State for Education [2025] EWHC 2794 (Ch), Mr Justice Raja [44] *I do not accept that I have been given the full story of the involvement of Peter Marples in the preparation of Mr Cohen's expert report and the joint statement. It seems to me likely that both have approached the work on expert evidence as a joint exercise, with Mr Cohen happy to defer to Mr Marples as the client. It seems likely that there has been regular and free flowing contact and communication between Peter Marples and Mr Cohen. Both have known that what they were doing was contrary to the rules relating to the preparation of expert evidence, but have colluded together to do so anyway. They have simply bungled their attempts to keep Peter Marples' involvement secret. Having been found out, they have dissembled to their lawyers, leading to the 13 June 2025 letter containing false statements, failed to make a clean breast of the extent of Peter Marples' involvement, for example in relation to the original report, in their factual witness statements, have made restricted disclosure of documents which would shed light on their involvement and have been evasive in their oral evidence to the court, so that each revelation has been drip fed to the Defendant and the Court.*

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## Revocation of permission to rely on expert evidence

- [45] The following conclusions flow from this:
  - This is a deliberate, cynical, planned breach of the rules relating to the preparation of expert evidence. It is a very serious breach.
  - The product of Mr Cohen in the shape of his report and the joint report are not independent. They do not represent his objective and unbiased opinion. They represent advocacy on behalf of the claimants, using words put in Mr Cohen's mouth by Peter Marples. They represent what Mr Marples wants Mr Cohen to say and are not Mr Cohen's opinion at all. This includes contributions on matters on which the expert avowedly knows nothing (such as Star Capital).
  - I have no confidence in Mr Cohen's ability to act in accordance with his obligations as an expert witness.

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## Costs sanctions

- *Glover v AXA XL Insurance Company Limited* [2024] EWHC 1257 (TCC), Mr Simon Lofthouse KC sitting as a judge of the High Court

*[90.11] The costs thrown away shall be paid by the Claimants in any event, and shall be assessed on the indemnity basis if not agreed. The Claimants shall also pay 30% of the costs of the Sixth Defendant considering the Structural Engineering Joint Statement and Expert Report of Mr Tant, such costs to be paid on an indemnity basis if not agreed.*

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## Other Cases

- *Secretariat Consulting Pte Ltd v A Company* [2021] EWCA Civ 6;
- *Andrews v Kronospan Ltd* [2022] EWHC 479 (QB) (see also Chris' blog about this case <https://chrismakin.co.uk/when-experts-pay-for-their-failings/>);
- *JSC Commercial Bank Privatbank -v- Igor Valeryevich Kolomoisky & Ors* [2025] EWHC 1987 (Ch) (see also Chris's blog at <https://chrismakin.co.uk/when-is-an-expert-not-an-expert/>)

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**Ben Harding**  
**Kings Chambers**

*“Update on Limitation”*

# Ben Harding

Year of call **2005**



✉	<a href="mailto:hyoung@kingschambers.com">hyoung@kingschambers.com</a>
☎	0345 034 3444

Ben Harding practises in all aspects of commercial litigation and dispute resolution. Most of his work is in the Business and Property Courts and he regularly appears across the Northern, North-Eastern and Midlands Circuits and in London.

Within his broad commercial practice Ben has developed specialisms (detailed further below) in contract disputes, company and shareholder matters, insurance, insolvency, professional negligence and construction.

Ben approaches every instruction with intellectual rigour, attention to detail, commercial pragmatism and speed. His attitude is that cases are won on the facts and lost on the law, so it is essential to identify and analyse the key issues early to achieve the best result for his client. He is also aware of the ever-pressing need to give a firm, clear view on prospects, for the benefit of the client and insurer/funder.

Ben acts predominantly as sole Counsel and has been led by chambers' silks on a number of occasions. His clients span the range from large corporations and institutions to private individuals, and the subject matter ranges from multi-million-pound claims and injunctions to his client's home.

## Expertise

### ADR Arbitration

Ben has acted as advocate in a number of arbitrations under the 1996 Act and various different arbitration schemes, and before both lawyer and non-lawyer tribunals. He has particular experience of arbitration in the context of disputes relating to professional partnerships and LLPs and some experience of sports arbitrations.

#### Notable ADR Arbitration cases

The Football League v. Curran (2022)

acted in arbitration pursuant to EFL Regulation 95 relating to Rochdale AFC

Re Raleys Solicitors (2020)

acted for former partner in partnership dissolution and winding up proceedings (in arbitration) relating to prominent Yorkshire firm of personal injury / industrial

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disease solicitors which dissolved by operation of law when three of six partners were suspended from practice in Feb 2009

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Re Beehive Surgery Partnership (2020)

---

acted for retiring partner in partnership dispute (subject to arbitration) relating to a medical partnership

---

Re an LLP (2021)

---

Acted (led by Mark Harper KC) for three former members of prominent firm of patent attorneys in an arbitration

## Banking & Finance

Ben has acted in banking and finance disputes throughout his practice, relating to loans (secured and unsecured); related professional negligence claims against surveyors and conveyancing solicitors; guarantees and indemnities; funding arrangements (including factoring, leasing, hire-purchase); consumer credit and financial services; loan, insurance and swap mis-selling; and assignments. He is regularly instructed to advise, draft and appear in Court both for and against financial institutions; and in FOS complaints/proceedings.

### Notable Banking & Finance cases

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Pharaoh Designs Limited (2024)

---

Acted for business customer in relation to £120k forged cheque claim

---

Re Parrott (2021-22)

---

advised in relation to £700k trust / investment dispute proceeding in High Court of the Isle of Man between investor and corporate services provider

---

Madworth Limited v. Asplin (2022)

---

claim for £250k by Isle of Man company against guarantor

---

Park v. CNH Industrial Capital Europe Ltd [2022] 1 WLR 860 (Court of Appeal)

---

claim by finance company against borrower and competing claim to set aside judgment on the grounds that it was procured by fraud; the principles set down by the Supreme Court in Takhar were considered and applied

---

Slater & Gordon v. Chester Lettings v. (1) Clydesdale Bank (2) National Australia Bank Limited (2021)

---

counterclaim against solicitor based on among other things failure to investigate and substantiate mis-selling claims against banking group; issues arising in relation to confidentiality in these proceedings of the terms of subsequent settlement agreement reached with banks

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(1) Palfreyman Power Ltd (2) GC Power Cables Ltd v. Lloyds Bank Plc (2021)

---

acted for complainant companies in FOS proceedings against their business bank in relation to a fraud on the companies committed by their financial controller

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whereby c.£700k was taken by presentation of cheques paid to cash. Complaint based on Bank's Quincecare duty of care to client to query payments. Complaint successful to extent of 50% of fraudulent payments and interest.

---

Moulding v. JCT600 Limited t/a Bentley Newcastle (2020)

---

acted for the defendant car dealer in relation to a claim by owner of The Hut Group to cancel the purchase of a Lamborghini Countach for c. £350k; the issues arising included the application of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumer Rights Directive in circumstances where the vehicle was inspected by an agent of the purchaser

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The Flying Dutchmen Ltd v. (1) Lloyds Bank Plc; (2) George Green LLP (2020)

---

advised on claims by garden centre operator against bank and former solicitors relating to £1.8M funding and hedging product

---

Bank of Baroda v. Maniar [2019] EWHC 2463 (Comm)

---

Manchester Mercantile Court – guarantee claim for €425k against former directors of ROI cash-and-carry company, defended on grounds that guarantee unenforceable by reason of Examinership proceedings in ROI

## Commercial Dispute Resolution

Ben acts in all areas of commercial litigation, with an emphasis on contractual disputes (including sale of goods, supply of services, agency, share/business sale agreement disputes and warranty claims).

### Notable Commercial Dispute Resolution cases

Re Pentagon Sport South Limited – Manchester BPC

---

Acting (led by Mark Harper KC) for petitioners in s.994 CA2006 petition concerning playground equipment supplier in respect of substantial shareholding

---

QC Legal Limited v. Deloitte LLP – BPC Manchester

---

Acted for claimant recruitment specialist in claim in contract and unjust enrichment for fee exceeding £400k in relation to real estate legal team move

---

Vandaglas v. Meredith – BPC London

---

Acted (led by Lesley Anderson KC) for defendants to £4m breach of warranty / misrepresentation claim arising out of sale of glass manufacturing business

---

Boots Opticians Professional Services Limited v. NHS England (Commercial Court / TCC)

---

Acted (led by Rhodri Williams KC) for defendant NHS body in defending claim for £9M for optical services provided during the Covid pandemic, pursuant to temporary emergency funding scheme

---

Trude v. (1) Hyman (2) Valcura Ltd (2022) – BPC in Manchester (Business List)

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acting for defendants in relation to claim for £988k arising from consultancy agreement connected with property joint venture

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(1) Muralidharan (2) Thiagaraja (3) Bader v. (1) Rosenthal (2) MIR Limited (2021)

---

High Court of Justice of the Isle of Man (Civil Division) – acting for claimants minority shareholders in unfair prejudice claim pursuant to s.180 of the IoM Companies Act 2006 relating to IoM B2B2C e-money business operating the MuchBetter payment platform (value potentially exceeding £100m); and in defending cross-claims by companies for breach of contract/duty

---

Elite v. BCR [2021] EWHC 3250 – Commercial Court

---

acted (led by Lesley Anderson KC) for insurance agent in defending a claim by an insurer for damages exceeding £400k on the basis of alleged breaches of a general binding authority agreement in relation to the issue of latent defect insurance policies

---

BP v. Haswell (2021)

---

acting for BP in relation to series of claims against former employees posted overseas in respect of UK incomes tax refunds arising from BP tax equalisation policies but retained by the employees, in sums exceeding £150k in each case

---

Yurukov v. Bet365 (2021)

---

acting for online betting company in relation to series of claims for allegedly unpaid winnings, defended on various bases including obvious error and/or operation of betting account for a third party

---

Parrott v. The Law Trust Limited (2021)

---

acting in dispute in High Court of Justice of Isle of Man for corporate and fiduciary service provider sued by client in relation to alleged investment losses of c.USD700k sustained over a number of years; claimant's agents and/or financial advisers joined as additional parties

---

Bates v. Kent County Council v. Agilisys Ltd (2021)

---

acting for outsourcing company in relation to claim by local authority for breach of contract and/or negligence concerning operation of call centre service and the authority's potential liability for catastrophic personal injuries sustained following a road traffic accident on an icy road

---

Ralph v. Given (2020)

---

BPC in Manchester – dispute between formerly engaged couple about ownership and right to possession of various assets including £200k Aston Martin and £250k engagement ring; issues raised include whether the hirer's rights under a hire purchase agreement can be equitably assigned by virtue of a promise to make a 'gift' of a car

---

Velocity Composites Plc v. Kaman Composites UK Limited (2020)

---

BPC in Manchester (Circuit Commercial Court) – acted for claimant manufacturer of aerospace composite kits in claim against defendant aircraft part manufacturer for £430k in sums due under and/or damages for breach of material supply agreement

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Tradebe Fawley Ltd v. Chemtech Waste Management Ltd (2020)

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---

BPC in Manchester (Circuit Commercial Court) – acted for waste management company in claim for £600k damages for breach of contract and/or negligence, arising from supply of hazardous waste with excessive cadmium levels and consequent unplanned shutdown of the claimant’s waste incinerator

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Profile Talent Ltd v. Chloe Etherington (aka Chloe Ferry) (2020)

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BPC in Newcastle – acted for prominent reality TV star in defending claim for commission/fees/damages following disputed termination of a representation agreement with the claimant talent agency; issues raised included whether agency owed fiduciary duties when seeking to renegotiate representation agreement

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Bank of Baroda v. Maniar [2019] EWHC 2463 (Comm)

---

Manchester Mercantile Court – guarantee claim for €425k against former directors of ROI cash-and-carry company, defended on grounds that guarantee unenforceable by reason of Examinership proceedings in ROI

---

Manchester City Football Club Ltd & Ors v. Davies & others (2017)

---

claim against group of urban climbers who had climbed on to the roof of the Etihad stadium in Manchester for worldwide injunctions against them and persons unknown preventing entry on to the Club and parent group’s premises. Led by David Casement KC. Interim injunctions obtained.

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## Company

Ben deals with a wide range of contentious company matters, both domestic and offshore. The majority of his (solvent) company work involves unfair prejudice petitions and shareholder disputes and he has a range of experience of advising, drafting and going to Court on such matters. He also acts in disputes arising from corporate transactions such as share and asset sale agreements and warranty claims; and breach of restrictive covenants (including applications for interim injunctions).

### Notable Company cases

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Re Pentagon Sport South Limited – Manchester BPC (2024)

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Acting (led by Mark Harper KC) for petitioners in s.994 CA2006 petition concerning playground equipment supplier in respect of substantial shareholding

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Koprulu v. TFC Holdings – BPC Manchester/London (2024)

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Acting for petitioner (a Turkish businessman) in s.994 CA06 petition concerning his investment in two companies and the misappropriation of c.£10M in money and assets

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Vandaglas v. Meredith – BPC London (2023)

---

Acted (led by Lesley Anderson KC) for defendants to £4m breach of warranty / misrepresentation claim arising out of sale of glass manufacturing business.

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(1) Muralidharan (2) Thiagaraja (3) Bader v. (1) Rosenthal (2) MIR Limited (2022)

---

High Court of Justice of the Isle of Man (Civil Division) – acting for claimants minority shareholders in unfair prejudice claim pursuant to s.180 of the IoM

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Companies Act 2006 relating to IoM B2B2C e-money business operating the MuchBetter payment platform (value potentially exceeding £100m); and in defending cross-claims by companies for breach of contract/duty

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Bibby v. (1) Project Fleet Newco Ltd; (2) Foresight Regional Investment LP (2022)

---

acted (alongside Eleanor Temple) in relation to substantial dispute arising from sale of plant maintenance and servicing business; claim for £1.87M unpaid consideration met by counterclaim for damages for breach of warranty and/or fraud

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Re JPS Financial Ltd, JPS Walker Ltd (2022)

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acted for respondents to unfair prejudice petition relating to successful claims management business and associated law firm, estimated value £800k – £1M. The case raised difficult issues concerning the valuation of WIP in claims management businesses and the effect of hindsight on such valuation.

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Re Graham & Brown Limited

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Ben (led by David Casement KC) acted for respondents to unfair prejudice petition concerning well-known wallpaper business founded in 1940s; petitioner sought a buyout order in relation to shareholding said to be worth £20M. Petition discontinued at trial in late 2018.

---

## Insolvency

Ben deals with all aspects of contentious corporate and personal insolvency. He frequently acts for office holders in relation to claims against former directors for misfeasance, transactions at undervalue, preferences and transactions defrauding creditors. He acts for directors in relation to disqualification and permission to act proceedings. He is also experienced in a wide range of insolvency applications (including applications to restrain presentation or advertisement of winding up petitions).

### Notable Insolvency cases

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Re Chesterpeak Developments Limited (2023) – BPC London

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Acted for defendants to liquidators' claim in misfeasance, transaction at undervalue and breach of trust to recover £4.3M in money and assets said to belong to the company

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HMRC v. Stellar Central Services Ltd and others (2023) – BPC Manchester

---

Acted for a respondent to a claim to set aside the decision of a meeting of creditors to approve a CVL on the grounds that a substantial vote in favour was by a connected creditor, raising questions of Pakistan company law

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Aston Risk Management Limited v. Jones (2023- BPC Manchester

---

Acted (led by Louis Doyle KC) for claimants in relation to substantial claim by assignees of liquidators' claim based on misappropriation of a medical reporting business

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Re Harewood Associates Ltd; Harewood Venture Capital Ltd (2022)

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BPC in Manchester (Insolvency and Companies List) – acted (with Louis Doyle KC) for claimant liquidators in relation to claims to challenge attempts to 'wipe out'

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intercompany balances by purported invoices for management charges in total sum of c. £4.5M

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Re Prospect Business Centres Limited (in administration) & 7 Others (2021)

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BPC in Leeds (Insolvency and Companies List) – acted for respondent directors and companies in relation to claims by office holders for group of serviced office providers challenging pre-insolvency intercompany transactions in sums exceeding £1M; advised on application to strike out which resulted in discontinuance of claims

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Re York Homes Development Ltd (2020)

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BPC in Manchester (Insolvency and Companies List) – successful application for an administration order pursuant to Schedule B1 para.12(1)(c) by a creditor in respect of a deadlocked property development company, where the creditor was owned by one of the shareholders in the company

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Re Houston Management Facilities Ltd (2020)

---

BPC (Insolvency and Companies List) – acted for respondent director in defending claims for c.£1.7M under ss.212 and 213 Insolvency Act 1986 in relation to allegedly unaccounted VAT on sales abroad of burnable refuse

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Bank of Baroda v. Maniar [2019] EWHC 2463 (Comm)

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Manchester Mercantile Court – guarantee claim for €425k against former directors of ROI cash-and-carry company, defended on grounds that guarantee unenforceable by reason of Examinership proceedings in ROI

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Re Rowellian Social Club (2016)

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Northampton District Registry – application for directions in the administration of a sports social club

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## International & Offshore

Ben has acted in a number of cases with an international element, raising conflict of law issues. He is also familiar with the requirements for service of English proceedings out of the jurisdiction and challenges to jurisdiction. Ben has also in recent years been instructed in relation to in a number of offshore matters proceeding in the High Court of the Isle of Man.

### Notable International & Offshore cases

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BP v. Haswell (2021)

---

acting for BP in relation to series of claims against former employees posted overseas in respect of UK incomes tax refunds arising from BP tax equalisation policies but retained by the employees, in sums exceeding £150k in each case. The cases involve issues around the substantive applicable law, and the procedural requirements for service out of proceedings against a former employee.

---

Apple Properties Limited; Buksh v. Bush (2022-2024) – High Court of the Isle of Man, Civil Division

---

Instructed for defendants to claim for 50% share in property investment company incorporated in Isle of Man

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*High Court of Justice of the Isle of Man (Civil Division)* – acting for claimants minority shareholders in unfair prejudice claim pursuant to s.180 of the IoM Companies Act 2006 relating to IoM B2B2C e-money business operating the MuchBetter payment platform (value potentially exceeding £100m); and in defending cross-claims by companies for breach of contract/duty

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Parrott v. The Law Trust Limited (2021)

---

acting in dispute in High Court of Justice of Isle of Man for corporate and fiduciary service provider sued by client in relation to alleged investment losses of c.USD700k sustained over a number of years; claimant's agents and/or financial advisers joined as additional parties.

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## Partnership

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Ben has acted in a range of partnership and LLP disputes. Ben has appeared in Court proceedings (including partnership dissolution and winding up) and acted in disputes under arbitration (before legal and non-legal tribunals). The partnerships/LLPs concerned have included commercial businesses and medical, dental and legal professional businesses.

### Notable Partnership cases

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Kular v. Kular (2022) – Birmingham BPC

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Partnership dissolution and property dispute between father and son chiefly concerning whether £1m commercial premises in Birmingham was partnership property

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Wayne and Gerardine Hemingway v. Mitchell (2022) – Manchester BPC

---

Acted for Claimants in partnership dissolution dispute, the chief asset being a collection of C20 artefacts and ephemera known as the Stella Mitchell Collection

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Aveiroe the Recovery Audit Partnership v. Trtilkova (2023) -Central London CC (BP work)

---

Partnership dissolution dispute concerning partnership between individuals based in the UK and Czech republic operating a global audit/advisory business; claim involved issues as to the applicability of Czech company and partnership law and the effect of decisions made in the Courts of the Czech Republic.

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Re an LLP (2021)

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Acted (led by Mark Harper KC) for three former members of prominent firm of patent attorneys in an arbitration.

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Prasad v. Hanif (2021)

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BPC in Manchester – partnership dispute arising from dissolution of medical partnership – Ben acted at 5-day trial in Feb 2021 of a range of issues as to the terms of the partnership agreement, treatment of partnership drawings, status and ownership of property and assets used in the partnership business

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Re Raleys Solicitors (2020)

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---

acted for former partner in partnership dissolution and winding up proceedings (in arbitration) relating to prominent Yorkshire firm of personal injury / industrial disease solicitors which dissolved by operation of law when three of six partners were suspended from practice in Feb 2009

---

Re Beehive Surgery Partnership (2020)

---

acted for retiring partner in partnership dispute (subject to arbitration) relating to a medical partnership

---

Conlon v. Conlon (2019)

---

BPC in Manchester – partnership dispute between brother and sister concerning stud farm and horse-trading businesses carried out in the UK and the USA; the proceedings concerned accounting issues arising post dissolution including the location and value of the partnership assets (including a 50% share in a horse estimated to be worth £4M)

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Worger v. AWB Charlesworth LLP (2018)

---

BPC in Leeds (Business List) – LLP dispute arising from contested expulsion of claimant from well-known North/West Yorkshire law firm. Ben (led by Lesley Anderson KC) acted for the firm and the partners other than the claimant, who sought c. £500k in respect of his partnership share, future profits, damage to reputation.

---

Kotak v. Kotak (2016)

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RCJ Chancery Division – complex partnership dispute between two brothers regarding a property investment and development business worth up to £15M, involving allegations that one brother ‘milked’ the partnership and burdened the properties with borrowing without the other’s consent

## Professional Negligence

Ben has acted in a range of professional negligence claims against solicitors, surveyors/valuers, financial advisers, accountants, insurance brokers and construction professionals. The focus of his professional negligence work is on claims against solicitors, and he has particular experience of acting for mortgage lenders against conveyancing solicitors.

### Notable Professional Negligence cases

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Parrott v. The Law Trust Limited (2021)

---

acting in dispute in High Court of Justice of Isle of Man for corporate and fiduciary service provider sued by client in relation to alleged investment losses of c.USD700k sustained over a number of years; claimant’s agents and/or financial advisers joined as additional parties on the grounds that they were themselves responsible for (among other things) any negligent dealing with the investment funds

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Choudhuri v. Elsey & Hodson (2021)

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acting for claimant in substantial claim against former solicitors based on negligent failure to complete a leasehold extension in relation to a doctor’s flat on Harley Street; and negligent failure to advise on / protect against the precarious terms of the landlord’s licence to practice medicine at the flat. The case also raises issues concerning postponement/extension of limitation periods on the grounds of incapacity and/or deliberate concealment.

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Slater & Gordon v. Chester Lettings v. (1) Clydesdale Bank (2) National Australia Bank Limited (2021)

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counterclaim against solicitor based on among other things failure to investigate and substantiate mis-selling claims against banking group; issues arising in relation to confidentiality in these proceedings of the terms of subsequent settlement agreement reached with banks

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Pakroo v. Withers LLP (2021)

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acted for claimant in claim for damages exceeding £400k against solicitors on the grounds of negligent drafting and/or advice in relation to the sale of a substantial residence and the potential tax issues arising. Settled in early 2022 before trial.

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DRS Welding v. Christie Owen & Davies; DRS Welding v. HCB Solicitors (2017)

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Birmingham Business and Property Courts – professional negligence claims against (1) surveyor for overvaluation of block of serviced apartments; (2) former solicitors for handling of claim against surveyor

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## Sport

Ben is a member of Kings Sports.

He has acted for a number of football clubs in relation to commercial and sports matters,. He acted in a high-profile claim by Manchester City Football Club and the City Football Group for worldwide injunctions against persons unknown to protect their global premises from trespassers (and in particular a group of urban climbers who climbed on to the roof of the Etihad Stadium in Manchester in 2017 and put a video of them doing so on social media). Ben was led by David Casement KC, instructed by Pinsent Masons LLP, and successfully obtained far-reaching interim injunctions.

Ben has also acted in a substantial dispute between a Premiership player and his former agent. He is keen to develop his sports law practice.

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### Notable Sport cases

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The Football League v. Curran (2022)

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acted in arbitration pursuant to EFL Regulation 95 relating to Rochdale AFC

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Manchester City Football Club Ltd & Ors v. Davies & others (2017)

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Manchester Business and Property Courts – claim against group of urban climbers who had climbed on to the roof of the Etihad stadium in Manchester for worldwide injunctions against them and persons unknown preventing entry on to the Club and parent group’s premises. Led by David Casement KC. Interim injunctions obtained.

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Bony v. Kacou & Ors (2017)

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Manchester Chancery District Registry – application to challenge jurisdiction in relation to claim by professional football player against former agents and associates for receipt of secret commissions / bribes

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Frazer v. Manchester City Football Club (2016)

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Manchester County Court – successfully defending ticket refund claim by claimant suspected to be or acting for a ticket tout

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Re Rowellian Social Club (2016)

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Northampton District Registry – application for directions in the administration of a sports social club

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Hockaday v. Leeds United Football Club (2015)

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Manchester District Registry – claim by former coach for £88k alleging he was sacked in breach of contract

## Technology & Construction

Ben acts in a wide range of construction work from high-value commercial projects involving standard form contracts including JCT, to more informal domestic construction projects. He also acts in adjudications and subsequent enforcement proceedings.

### Notable Technology & Construction cases

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PGK v. A1 Demolition Limited (2022) - BPC in Birmingham

– dispute arising from agreement for defendant to carry out groundworks at a former quarry site in Leicestershire prior to residential development. Issues arising include the safety of the work done and compliance with planning conditions

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Gordon v. Carrock Design Build Limited (2021)

acted for claimant property owners in relation to a claim for damages exceeding £600k for negligent design and/or construction works at an exclusive hotel on Ullswater; and in particular the failure to produce a watertight shell when converting an existing barn building

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Flynn v. GB Joinery Ltd (2020)

acted for claimant property owners in relation to claim for damages exceeding £100k for defective joinery and construction works

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Tradebe Fawley Ltd v. Chemtech Waste Management Ltd (2020)

*BPC in Manchester (Circuit Commercial Court)* – acted for waste management company in claim for £600k damages for breach of contract and/or negligence, arising from supply of hazardous waste with excessive cadmium levels and consequent unplanned shutdown of the claimant’s waste incinerator. The issues raised included complex technical questions around the effect on the waste processing cycle of the introduction of such waste and the subsequent efforts to mitigate the damage.

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Britcon (UK) Limited v. WYG Engineering Limited (2019)

*BPC in Leeds (TCC)* – acted for claimant building company in damages claim against defendant civil and structural engineer arising from negligent design and specification of foundations, retaining wall and fill for construction project in Rotherham. Awarded £140k following 2-day trial.

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Megson Utilities v. Complete Utility Solutions (2017)

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construction dispute regarding installation of gas and water pipework at Royal Veterinary School, £90k payment claim met by £150k damages set-off

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## Memberships

- Northern Commercial Bar Association
- Chancery Bar Association
- British Irish Commercial Bar Association
- Professional Negligence Bar Association
- R3 Associate Member

## Qualifications and Awards

- BA (Hons) Literae Humaniores – first class (Balliol College Oxford)
- GDL (City University, London)
- BVC (BPP Law School, London)
- Major Scholar (Inner Temple)

## Recommendations

“He is highly technical, highly committed, and great value for money.” “Ben is very good, attentive and academic.” “He is clever, conscientious and has an eye for detail.” “Ben Harding is attentive and academic. He is completely reliable and responsive.” “Ben is exceptionally gifted in terms of his knowledge of the law and rules, and his written work is exceptional. He’s a top-performing all-rounder.” “Ben Harding is thoughtful, considered, easy to deal with and knowledgeable. He is good with lay clients, a very nice man.” “He has a very solid practice in insolvency and he’s a very competent and capable practitioner; a very strong safe pair of hands and a calming influence.” **Chambers UK 2026**

‘Ben blends a highly cerebral and commercial approach. He is a first-class senior junior at the Manchester Bar.’ **Legal 500 2026**

“Attention to detail, very sound legally and very persuasive as an advocate.” “Ben can advise on the full gambit of commercial and chancery issues.” “He is an incredibly thoughtful barrister.” “Ben Harding is brilliant across the board.” **Chambers UK 2025**

‘Ben is cerebral, detailed, analytical, and he treads with authority and intellect in all aspects of his commercial litigation practice. He is able to tailor his work and input according to the commercial circumstances and the relative importance of the matter on the client’s agenda, and he is responsive and dedicated.’ **Legal 500 2025**

“He is technical and very commercial as well as very good with the clients.” “Very responsive, hard-working and incredibly reliable.” “Ben is an experienced barrister with a reassuring air of confidence and calm. He is a very able advocate in his submissions to court and in delivering the right result for his clients.” **Chambers UK 2024**

‘Ben is incredibly responsive and reliable, hard-working, a joy to work with, and good on the detail.’ **Legal 500 2024**

“Ben Harding is a safe pair of hands.” “Pragmatic, very client friendly and certainly a rising star at the Manchester Bar.” “Ben provides the perfect mix of clever, thorough and commercial advice with excellent client care.” **Chambers UK 2023**

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"Ben has a breadth of knowledge that is highly impressive and combines that with a gravitas that belies his length of call. An outstanding young commercial barrister and one to watch for the future." **Legal 500 2023**

"Very intelligent, and his preparation is phenomenal. He is a very considered advocate – quiet but effective." **Chambers UK 2022**

"Very calm, very pragmatic and very bright." **Legal 500 2022**

"He is extremely diligent, knows the law inside out and is not afraid to come off the fence and give his view." "He gives insightful advice on knotty commercial litigation disputes." "He is a very good advocate, who is extremely knowledgeable and hard-working." **Chambers UK 2021**

"Absolutely outstanding. His technical knowledge is excellent and he is very supportive and responsive." **Chambers UK 2021**

'A star junior for commercial disputes.' **Legal 500 2021**

'Fabulous brain able to distill a lot of information in a short time. Very calm and methodical in court and in conference. Very reassuring.' **Legal 500 2021**

"He is excellent – very good with clients, very thorough and always takes time to prepare for conferences." "He is hard-working and his written work is a delight. His advice is succinct and easy for clients to understand." – **Chambers UK 2020**

'A brilliant barrister.' – **Legal 500 2018**

"He is an exceptional intellect and a skilled advocate." – **Chambers UK 2015**

"He is as bright as a button; he has a great delivery and a good courtroom presence." – **Chambers UK 2014**

## Publications

### Articles

- (from Jan 2023) editor of chapters on Default Judgment and Summary Judgment in *Commercial Litigation – Pre-Emptive Remedies* (Sweet & Maxwell)
- Calling time: the law of limitation directions – Counsel Magazine June 2017; <https://www.counselmagazine.co.uk/articles/calling-time>

### Seminars

- presented session on unlawful dividends for Kings Chambers Insolvency Day – Sep 2022
- The Disclosure Pilot and new approach to Witness Statements – tactics – in-house seminar for Hill Dickinson (Manchester) – May 2022
- presented workshop for Association of Partnership Practitioners on wrongful exclusion from partnership and/or LLP – Jun 2021
- discussion panel on the Disclosure Pilot at Chancery Bar Winter Conference Jan 2020
- presented workshop session on the insolvency tipping point following *Sequana* for Kings Chambers Insolvency Day – Oct 2019
- the CPR Disclosure Pilot under Practice Direction 51U – seminars for Kings Chambers in Jan 2019 and Jun 2021; in-house for DWF insolvency team Jun 2019 and Lupton Fawcett Feb 2020
- Interim Injunctions to protect property – in-house seminar for Hill Dickinson (Liverpool) October 2018
- Online payment fraud: a case study – in-house seminar Nov 2017 for Addleshaw Goddard LLP

## Accreditations

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# PNLA Seminar Limitation Update Accrual, s.14A and s.32(1)(b)

Ben Harding



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## Accrual – the basics



- 'primary' limitation period
  - 6y from date of accrual for tort and simple contract (ss.2, 5 LA80)
  - Claim under s.2(1) Misrepresentation Act 1967 = action founded on tort → s.2 LA80 (*Green v. Eadie* [2011] EWHC 824 per Mark Cawson QC s/a DHCI)
  - 12y for action on a speciality (inc. deed – s.8 LA80)
- Pleading and proof
  - If D pleads limitation → burden on C to show in time
  - D should give particulars: CPR 16PD para.11.3 (PI)
  - Open to D to prove CoA accrued earlier (see *London Congregational Union Inc v. Harris* [1988] 1 All ER 15)



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## When does CoA accrue?



- Contract**
- CoA is complete when breach of contract occurs, whether or not the damage (or any damage) suffered at the time
  - When is the contract breached?
    - Broadly: when the negligent work is done
  - Might D owe 'continuing' obligations to check/correct/remedy?
    - Possible (see *Midland Bank Trust Co Ltd v. Hett, Stubbs & Kemp* [1979] Ch 583); but needs special facts (see *Nouri v. Marvi* [2010] EWCA Civ 1107, [2011] PNLR 7)
    - Contrast continuing failure to remedy initial breach (see *Bell v. Peter Brysons & Co* [1990] 2 QB 405; *Capitol (Banstead 2011) Ltd v. RFB Group Ltd* [2015] EWCA Civ 1310)
    - Later instruction may entail reviewing prev advice/work; *Al v. Clyde & Co LLP* [2024] EWHC 818 (Comm) at [97]. Or prev work may be put in issue in subsequent proceedings. Professional may then have duty to disclose mistakes in earlier work – if knows or ought to know there is a significant risk the earlier advice negligent: *Cutlers Holdings Ltd v. Shepherd & Wedderburn LLP* [2022] PNLR 21 at [155]-[156]



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## Effect of s.14A



- Where s.14A applies:
  - s.2 (i.e. the usual 6y period) does not apply (s.14A(2))
  - Replaced (s.14A(3)-(4) by a dual limitation period expiring either
    - 6y from the date on which cause of action accrued; or
    - 3y from the 'starting date' if that expires later
- What is the 'starting date' / date of knowledge?
  - s.14A(5): "*the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action in damages in respect of the relevant damage and a right to bring such an action*"



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## s.14A – starting date



- What is "*the knowledge required for bringing an action in damages in respect of the relevant damage*"?
  - This means (s.14A(6)) "*knowledge both (a) of the material facts about the damage in respect of which damages are claimed; and (b) of the other facts relevant to the current action mentioned in subsection (5) below*"
- the "material facts about the damage" are (s.14A(7)) "*such facts about the damage as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment*"
- the 'other facts' are: "*(a) that the damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence; and (b) the identity of the defendant; and (c) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person on the additional facts supporting the bringing of an action against the defendant*"
- → both aspects in s.14A(6) required, so worth investigating w client



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## s.14A – 'knowledge'



- Degree of certainty needed for C to have 'knowledge':
  - C need not know for certain and beyond possibility of contradiction
  - C must know "*with sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking legal and other advice and collecting evidence*" (*Halford v. Brookes* [1991] 1 W.L.R. 428, *Howard v. Fawcetts* [2006] UKHL 9)
  - Suspicion probably not enough; reasonable belief likely will be
- Level of detail of knowledge:
  - "broad knowledge" / knowledge of the 'essence' sufficient (*Howard* [10])
  - Not the level of detail required for lawyers to fully draft claim
- Causation / attributability of damage to act/omission of D:
  - C must know that the act/omission is at least a possible, and not fanciful, cause of the damage (*Howard* at [11]); but may lack the requisite knowledge if has a strong belief in other causes than D's act/omission
- Knowledge that the acts/omissions do or do not as a matter of law involve negligence is irrelevant: s.14A(9)



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## s.14A – knowledge extended



- Starting point is what C actually knew
- may include knowledge of agents/employees (esp for corporate C); and of partners (where C a partnership)
- C may also be fixed with:
  - Knowledge of his solicitors (depending on scope of retainer): *Heathcote v. David Marks & Co* [1996] 1 EGLR 123
  - Knowledge of persons to whom C's affairs entrusted e.g. *Lenderink-Woods v. Zurich Assurance Ltd* [2016] EWHC 3287 (Ch) – C's children (but only their actual knowledge; not 'constructive' knowledge)
  - Constructive knowledge under s.14A(10)
- Note on 'earliest date' – time does not stop or restart if the knowledge is lost or forgotten (*Ezekiel v. Lehrer* [2002] EWCA Civ 16)



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## s.14A – constructive knowledge



- What is 'constructive knowledge'? Under s.14A(10):  
*"For the purposes of this section a person's knowledge includes knowledge which he might reasonably have been expected to acquire-*  
*(a) from facts observable or ascertainable by him; or*  
*(b) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek;*  
*but a person shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice."*



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## s.14A – constructive knowledge



- Largely objective test with wide room for argument about C did / should have done:
  - What facts were 'observable' or 'ascertainable' by C?
  - What knowledge might C reasonably have been expected to acquire from those facts?
- C's general characteristics can be taken into account: q: is what knowledge C expected to acquire, not what knowledge a reasonable person would acquire: *Grogan v. Aldridge & Brownlee* [2004] EWCA Civ 2529 at [25].
  - But not characteristics peculiar to C e.g. excessive naïveté (*Saunders v. Swamer Ltd* [2015] PNLR 6 at [33])
  - Not responsibility for a defendant's omission (*DODD v. EWCA Civ 234*) but cf. *OT Computers*: relevant that company not trading
- 'fablet' can do heavy lifting – fertile ground for D:
  - C can fix C with knowledge that would have been acquired from facts that would only be observed/ascertained if C had taken action – not just what C already knew
  - E.g. C lender should have investigated within a matter of months when borrower made no payments, would have discovered problem with title, fixed with knowledge of the problem back over the time of completion (*Procter v. Procter & Co* [2002] 2 Lloyd's Rep. 79 309)
  - see also *Financial Mortgage Corp v. Shaker and Co* [1996] PNLR 345 (lender should have requested and obtained valuation, fixed with knowledge of problem that original lender, as the party with a much better credit record, should have taken those steps); *Mortgage Corp v. Shaker and Co* [1996] PNLR 345 (lender knew property well under survey value from a year before, had not fixed with knowledge they would have obtained from retrospective valuation)
- When is it reasonable to seek expert advice?
  - Generally – when C has suffered a significant injury or loss
  - In such circumstances for C to show the need being fixed with the knowledge expert advice would have led to why it was reasonable not to seek expert advice: see *Johnson v. MICO* [2012] 2014 Civ 1305 at [34]
  - Court may find that it would have been reasonable for C to seek expert advice for reasons other than investigating the true damage the subject of the claim: see *Finney v. Mortgage v. Parry*



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## s.14A – constructive knowledge



- Return to pleading and proof:
  - Burden on C to show he did not have requisite knowledge under s.14A any earlier than the date 3 years before issue. *Howard*
  - C need not establish a particular 'date of knowledge' – provided C can show (on the balance of probabilities) that whatever the date was, it was within the last 3y before issue. *Wintomb v. Keith Park Solicitors* [2023] EWCA Civ 326 at [73]-[74]. But if on the evidence the date could have been before or after, C will fail to discharge the burden.
  - Sometimes said that burden under s.14A(10) is on D, to show that C had constructive knowledge of the relevant matters sooner. (See e.g. *John v. El Lilly & Co* [1993] 1 WLR 762 – a PI case). The better view may be that once C adduces evidence to show a date of knowledge within the last 3 years before issue, it is always open to D to plead and prove an earlier date of constructive knowledge.
  - C cannot avoid problems under s.14A by selectively pleading breaches of duty and arguing he did not have the requisite knowledge in relation to the pleaded breaches more than 3y before issue. The Court looks at the real substance of the complaint and whether C had the requisite knowledge of that complaint; and s.14A does not require every (sic) particular of breach to be known. See *Muir v. A & C Dairy of Scotland plc* [2018] EWHC 3583 (swag mis-selling case: real complaint/claim was about the sale of the swaps in 2006-2008; and not, (as pleaded) subsequent failure by D to disclose C's potential liability on the swaps)



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## s.14B – the 15y longstop



- Under s.14B(1) LA80:
  - *"An action for damages for negligence, other than one to which section 11 of this Act applies, shall not be brought after the expiration of fifteen years from the date (or, if more than one, from the last of the dates) on which there occurred any act or omission –*
    - (a) which is alleged to constitute negligence; and
    - (b) to which the damage in respect of which damages are claimed is alleged to be attributable (in whole or in part)"
- NB the 15y period runs from the act/omission; and the expiry of that period bars the right of action notwithstanding that (1) the cause of action has not even accrued yet (2) the date of knowledge under s.14A has not occurred yet.
- So: check the date of the earliest act/omission complained of



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## ss.14A, 14B and s.32(1)(b)



- By virtue of s.32(5), ss.14A and 14B do **not** apply to any action to which s.32(1)(b) applies, with the effect that:
  - The relevant limitation period for actions to which those sections would otherwise apply is the usual 6y period under s.2 LA80 (s.32(5))
  - The date when time starts running is determined under s.32(1) (i.e. when the concealment was discovered or could with reasonable diligence have been discovered) – not by reference to s.14A / date of knowledge
  - There is no 15y longstop where s.32(1)(b) applies – so in theory claims may be brought even where the act/omission occurred more than 15y before issue
- However the relationship between the regimes is complex:
  - Where C would have sufficient actual knowledge to start time running under s.14A, he may also therefore have actual knowledge of all 'facts relevant for his right of action within the meaning of s.32(1)(b)'. No subsequent act of purported deliberate concealment by D can remove that knowledge or amount to effective deliberate concealment within s.32(1)(b); see *Sheidon v. Outhwaite* [1996] 1 AC 102 at 144B, 145-D; *Overy v. Dunnington Limited* [2018] EWHC 353 (Ch)
  - On the other hand it would in principle be possible for D to deliberately conceal a relevant fact where C would have only the constructive knowledge for time to start running under s.14A; but such constructive knowledge may also mean that C could with reasonable diligence have discovered the concealment (though C will have the full 6-year period running from constructive discovery rather than the 3y period under s.14A)



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### s.32(1) – deliberate concealment



(1) Subject to subsections (3) (4A) and (4B) below, where in the case of any action for which a period of limitation is prescribed by this Act, ...

(b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant;...

the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.

References in this subsection to the defendant include references to the defendant's agent and to any person through whom the defendant claims and his agent.



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### Alternative route – s.32(2)



• (2) For the purposes of subsection (1) above, deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty."

• **Breach of duty** – legal wrongdoing of any kind which gives rise to cause of action (inc e.g. acts/omissions giving rise to claim under s.140A CCA74)

• must be deliberate: D knows he is committing a breach



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### "fact relevant to C's right of action"



• 'statement of case' test:

• → a fact without which the cause of action would be incomplete; not a fact that would merely strengthen an existing case (*Johnson v. Chief Constable of Surrey* (Times 23.11.92, CA; *Arcadia Group Brands Ltd v. Visa Inc* [2015] EWCA Civ 883)



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## Deliberate concealment: *Potter v. Canada Square*



- PPI claim
  - 2006 Loan for £20,787.24 comprising £16,954.00 cash and £3,834.24 PPI premium
  - 95% of PPI premium paid to lender as commission; £182.50 to insurer
  - Agreement ended 08.03.10
  - Lender did not tell C about the commission
- Unfair relationship claim s.140A CCA74 based on failure to disclose existence + size of comm
- Limitation defence – s.9 LA80 - 6y from date credit agreement ended. (Though see now *THG v. Zedra* [2026] UKSC 6?)



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## *Potter*



- CA: rejected limitation defence
  - s.32(1)(b) applied:
    - Failure to disclose cd amount to deliberate concealment where there was a duty to disclose
    - No free-standing legal duty required; cd be a duty "arising from a combination of utility and morality" or in this case from the obligation to act fairly imposed by s.140A CCA74
    - Lender had been at least reckless: must have known there was a risk it was obliged to disclose the commission; and a risk that non-disclosure wd make the relationship unfair
- SC: outcome correct; reasons wrong
  - Law took a wrong turn in *Williams*: no requirement for a duty; and recklessness not enough
  - Lender here had concealed - by consciously deciding not to inform borrower as to existence and amount of commission → simple application of s.32(1)(b)



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## The wrong turn



- *Williams v. Fanshaw Porter & Hazlehurst* [2004] 1 WLR 3185; *The Kriti Palm* [2007] 1 All ER (Comm) 667
- S.32(1)(b) 'embellished' as if it read:  
*"any fact which was to the knowledge of the defendant relevant to the plaintiff's right of action or to a potential right of action, or as to the relevance of which to the plaintiff's right of action or potential right of action the defendant was reckless, has been deliberately concealed from him by the defendant knowingly or recklessly in breach of a duty, either imposed by law or arising from a combination of utility and morality, to disclose it."*



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## “deliberately concealed”



- “A claimant who proposes to invoke section 32(1)(b) in order to defeat a Limitation Act defence must prove the facts necessary to bring the case within the paragraph. He can do so if he can show that some fact relevant to his right of action has been concealed from him either by a positive act of concealment or by a withholding of relevant information, but, in either case, with the intention of concealing the fact or facts in question.” *Cave v. Robinson Jarvis & Rolf* [2003] 1 AC 384 at [60] per Lord Scott
- “What is required is (1) a fact relevant to the claimant’s right of action, (2) the concealment of that fact from her by the defendant, either by a positive act of concealment or by a withholding of the relevant information, and (3) an intention on the part of the defendant to conceal the fact or facts in question.” *Potter v. Canada Square Operations Ltd* at [109] per Lord Reed



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## “deliberately concealed”



- **Concealment**
  - *Potter* [67], [98]-[105] - Ordinary meaning: keep something secret
    - Positive act of concealment
    - Withholding – but no need for duty to disclose
  - Can conceal something ‘in public domain’: *DLA v. Henshaws Farming LLP* [2025] PNLR 21
- **intention to conceal**
  - *Potter* [106]-[108]: decision not to inform
  - Deliberate not reckless or mistaken



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## When does time start?



- When C actually discovers, or could with reasonable diligence have discovered, the concealment (or the concealed facts?)
- State of knowledge:
  - when C discovers that it has a worthwhile claim
  - = sufficient confidence to embark on the preliminaries to the issue of a writ inc
  - Compare s.14A

*Gemalto Holding BV and others v. Infineon Technologies AG* [2023] Ch 169 at [53]
- Multiple concealed facts: must all be ‘discovered’ for time to run? *Halifax v. Ringrose & Co (A Firm)* [2000] PNLR 483 at 494A-B



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## Reasonable diligence



"[418] The question is not whether the claimants should have discovered the fraud sooner, but whether they could with reasonable diligence have done so. The burden of proof is on them. They must establish that they could not have discovered the fraud without exceptional measures which they could not reasonably have been expected to take. In this context the length of the applicable period of limitation is irrelevant. In the course of argument May LJ observed that reasonable diligence must be measured against some standard, but that the six-year limitation period did not provide the relevant standard. He suggested that the test was how a person carrying on a business of the relevant kind would act if he had adequate but not unlimited staff and resources and was motivated by a reasonable but not excessive sense of urgency. I respectfully agree."

Paragon Finance Plc v DB Thakerar & Co (A Firm) [1999] 1 All ER 400



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## Reasonable diligence



- Applies at two stages (*OT Computers v. Infineon* [2021] EWCA Civ 501 at [47]):
  - Whether anything to put C on notice of need to investigate
  - What a reasonably diligent investigation wd reveal
- Having regard to the claimant rather than a hypothetical company/person
  - No assumption that C is something they are not
  - But: "peculiar characteristics" of C generally disregarded: *OT Computers* at [38]
  - Query dyslexia? *Adams v. Bracknell* [2005] 1 AC 76
- Q of counterfactual fact what C would/should have done, to be decided on balance of probabilities (see *Bilta (UK) Ltd v. Tradition Financial Services Ltd* [2025] UKSC 18: applied where C dissolved)



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## Professional Ds after Potter



- For deliberate concealment the D must (1) know the 'relevant fact'; and/or (2) have deliberately breached its duties
  - → hard to show in typical negligence case (eg omission) as ex hypothesi the professional missed something through lack of care
  - but sufficiently egregious breach may allow an inference that D knew it was breaching its duty and/or that a mistake had been made
- D must also positively conceal or decide not to disclose the 'relevant fact'
  - Again may be hard to show in practice
  - Per Potter: existence of duty to disclose is relevant to whether there was deliberate concealment but:
    - Duty to disclose comes about through wider negligence obligation (eg: *Barrett v. London & South East Railway Co* [1895] 1 QB 413; *Alford v. Bournemouth & Poole Harbour Board* [1901] 1 KB 101; *Alford v. Bournemouth & Poole Harbour Board* [1901] 1 KB 101; *Alford v. Bournemouth & Poole Harbour Board* [1901] 1 KB 101)
    - Threshold for duty to disclose given negligence / advise client to obtain separate advice not low where professional knows or ought to know there is a material risk of loss or damage
    - Where such duty is owed, arguable that it is a continuing duty persisting for as long as client is able to sue (see *Alford v. Bournemouth & Poole Harbour Board* [1901] 1 KB 101)
    - Generally, no duty to disclose negligence to former client
    - On the other hand, as no duty required to establish concealment by silence, once solicitor knows a 'relevant fact' and decides not to tell client or former client – or be enough for deliberate concealment if client later sues
- NB assertion of false root of itself deliberate concealment (*Jessup v. Wetherall* [2006] EWHC 2582 (QB))



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**Jonathan Watmough**  
**Partner**  
**Keystone Law**

*“The Claimant Perspective”*

# KEYSTONE LAW

## Jonathan Watmough

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Jonathan specialises in resolving professional negligence claims and has done so for over 20 years. In that time, he has acted on claims against a wide range of professionals including solicitors, accountants, insurance brokers, financial advisers, surveyors, structural engineers, project managers, estate agents, health & safety consultants and IT consultants.

Having previously defended such claims for professional indemnity insurers, Jonathan now acts exclusively for claimants and uninsured defendants, both in relation to claims and any policy disputes arising from them.

Due to his background experience, and because he acts for both claimants and defendants, Jonathan possesses a rare appreciation of the issues and pitfalls that arise in professional negligence claims. This enables him to provide his clients with intelligent solutions, aimed at resolving claims as favourably and efficiently as possible.

KEYSTONE LAW

THE CLAIMANT PERSPECTIVE



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KEYSTONE LAW

THE DEFENDANT PERSPECTIVE



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KEYSTONE LAW

MY PERSPECTIVE AS DEFENDANT SOLICITOR

- Protect
- Expose
- Prevent
- Defend
- Stop
- Support



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### THE CLAIMANT PERSPECTIVE

- It's as simple as
- There's a commercial incentive
- We'll talk it through
- We can trust them
- They're bound to admit they're in the wrong
- It won't take long



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### THE CLAIMANT SOLICITOR'S PERSPECTIVE

- Brian the blinkered barbarian
- Christopher the inexperienced combatant
- Katy the colour-blind crusader
- Penny the relentless party padder
- Peter the proverbial pink panther



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### WHO'S WHO IN PROFESSIONAL NEGLIGENCE?



vs



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JUSTICE FOR ALL



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FOR FURTHER INFORMATION



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**Anna Lockyer & Joanne Chase  
Clarion Costs**

*“Professional Negligence & Costs”*

The logo for Clarion, featuring the word "Clarion" in a white, bold, sans-serif font. The text is centered over a background of abstract, swirling colors in shades of purple, blue, and pink, resembling marbled paper or liquid paint.

## Joanne Chase

Legal Director

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Joanne Chase has a wealth of experience working with many of the top firms listed in the Legal 500. She is a Costs Lawyer, and a Fellow of the Association of Costs Lawyers with over 19 years' experience in legal costs. Joanne is comfortable receiving instructions from both receiving and paying parties, and she specialises in costs recovery for high value complex matters. Joanne is also comfortable working with both professional clients and Litigants in Person.

Joanne leads the civil and commercial litigation costs side of the team at Clarion, and her knowledge and experience dealing with all types of legal costs is invaluable when supervising other members of the team.

Joanne regularly speaks at both internal and external events and delivers training on all aspects of costs including litigation funding and maximising costs recovery from a claim.

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## Anna Lockyer

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Anna Lockyer - Senior Associate - has an extensive background in Civil and Commercial Litigation and qualified as a Costs Lawyer in 2018. Anna is experienced in preparing high-value and complex Costs Budgets, Precedent Rs and Precedent Ts, dealing with budget negotiations and attending Costs and Case Management hearings on behalf of the instructed party.

Additionally, she is proficient in drafting Statements of Costs, Bills of Costs, Points of Dispute and Replies and undertaking negotiations to move claims for costs to successful resolution.

Anna predominantly deals with Commercial Disputes, Property Litigation and Contentious Probate matters although has a wealth of experience in personal injury and clinical negligence claims. Beyond Anna's legal practice, she is an active contributor to the legal community—chairing and speaking at commercial litigation seminars, delivering external training and publishing thought leadership articles. Additionally, Anna is a Woman in Costs Mentor and a member of the Leeds Law Society.

<https://www.clarionsolicitors.com/our-people/anna-lockyer>

# PROFESSIONAL NEGLIGENCE AND COSTS: GETTING IT RIGHT THROUGHOUT THE CLAIM

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Joanne Chase, Legal Director and Costs Lawyer  
Anna Lockyer, Senior Associate and Costs Lawyer

**Clarion** www.clarionsolicitors.com

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## Clarion - who we are

- Full service law firm based in Leeds, 18 service lines
- 33 in the Costs Team
- Act for over 200 law firms
- Costs Law, Litigation Funding advice and bespoke training
- Only provider with two ranked individuals in Legal 500
- Band 1 Chambers for 6 years running









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## Professional Negligence and Costs

Section 1:

- Why costs matter
- Funding and hourly rates
- Proportionality

Section 2

- Time recording
- Recoverability of Costs
- File management & Attendance notes
- Costs Management

Section 3

- N260s and summary assessment
- Payments on Account and securing one at the earliest opportunity

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## Section 1 - Why Costs Matter

Costs are important in **case selection**:

Understanding the likely amount of costs to be incurred vs the potential amount of recovery helps firms choose commercially viable cases

Even more important in light of fixed recoverable costs;

Damages £10,000 - £25,000 captured by fixed costs regime, typically Band 4.

Damages £25,000 - £100,000 captured by intermediate costs regime.

Factors to be considered are applicable to costs in general



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## Section 1 - Why Costs Matter

Costs are important in **litigation strategy**:

Plan around recoverable vs non recoverable costs

Consider early settlement offers to put pressure on; Part 36 offers are a great tool for litigators

Avoid high expert fees by giving consideration to costs



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## Section 1 - Funding

**The starting point**

Get this right and you can proceed with confidence in respect of the fundamentals of costs recovery

**Key Points**

- There are various different types of retainer:
- Private retainer, CFA, BTE, ATE, 3rd party funding – investigate and select the right option
- If anticipate fixed recoverable costs will apply, what are you going to do about shortfall? What does your retainer say?

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## Guideline Rates in effect from January 2026:



Guideline hourly rates					
Grade	Paralegal	London 1	London 2	National 1	National 2
A	£176	£432	£390	£390	£390
B	£165	£385	£347	£347	£347
C	£154	£338	£299	£299	£299
D	£143	£291	£251	£251	£251

- What hourly rate are you charging? Crucial that thought and consideration is given at the outset to set the correct rate
- Factors to consider when setting retainer rates:
  1. Uplift on guideline rates may need justification at assessment
  2. Are the rates reasonable / proportionate – CPR 44.3 (5) and CPR 44.4 (3)
- Regularly review the hourly rate – did something change in the litigation to warrant an increase?
- Evidence of increased rates – was your client provided with notice?

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## Section 1 - Funding

- CFA – what success fee are you seeking? Does it state a % (not left blank). Has the agreement been explained to your client?
- Clients now have a real interest in costs
- Don't rush it – make sure it is well thought through at the outset.
- A failure to consider costs at the outset could come back to bite

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## Retainer trends / common pitfalls

- Avoid confusing hourly rate structures – simplify where possible to ensure consistency with ledger
- Is the scope of your retainer correct? Does it cover the anticipated work?
- Specifically provide for interim statute billing, otherwise challenges later (*Mordue v Freeths* [2025] EWHC 1570 (SCCO) / *Toppisson GmbH v CMS Cameron McKenna Nabarro Olswang LLP* [2025] EWHC 118 (SCCO))
- Monitor and update estimates prospectively (*Jennifer Underhill v Thackray Williams Solicitors* [2024] EWHC 3206)
- Correctly apply retrospectivity to the agreement

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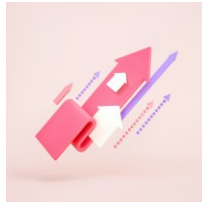
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## Proportionality – do the numbers work?

Two main areas that generate significant costs in professional negligence claims;

1. Expert fees
2. Disclosure costs

Important to give consideration to proportionality, especially when there is tension between the potential level of damages and the level of costs incurred



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## Proportionality: Practical Case – Rezek Clarke v Moorfields Eye Hospital [2017] (SCCO)

### Interesting point in the judgment:

*"It is necessary for parties to make an assessment at the outset of the likely value of the claim and its importance and complexity, and then to plan in advance the necessary work..."*

Master Simons expected to see evidence to support case planning or consideration of costs to be incurred (as case was never worth more than £5k)

### TOP TIP

- Case plan with reference to CPR 44.3(5) from the outset, particularly where there is likely to be tension between value and legal costs
- Advise your client on proportionality early – explain the tension between undertaking certain steps to assist the claim versus potential impact on costs recovery due to proportionality factors. Bear in mind informed consent if you are charging a shortfall to the client.

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## Time Recording, File Management and Attendance Notes

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## Time recording

Correct starting point:

- Record all your time
- True recovery rates and profit levels
- Reflect and work out where to improve – efficiency

Common pitfalls:

- Not recording time
- Self-editing
- Poor narrative descriptions and/or attendance notes (or none at all)
- Inconsistency in relation to some activities (supervision, inter fee earner meetings, attendance notes and research)

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## Time recording – practical tips

- Record time as you go through the day – never at the end of a day (or week!)
- Never bulk time record - break your time down by activity
- Round your time up – the 6-minute unit
- Incoming correspondence, short calls and emails, supervision, research and attendance notes
- Build in 'thinking time' to your time recording
- Inter fee earner meetings – adds real value but often not recorded
- WhatsApp messages – how do I record for them?
- Bundle preparation
- Reviewing reports and documents. Break the time down and you will record accurately (reading the report, consider next steps, advice to the client, clarify deadlines, inter fee earner meetings)
- Provide succinct detail to show how action progressed case

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## Time Recording

- Time claimed needs to be broken down into PTA Codes (schedule 2, CPR 47 PD):



- Borne from the UTBMS codes – set of international codes

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# Costs Management, Trends and Pilot Schemes

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## Practical considerations

- Don't assume a £10m+ claim won't be budgeted. More familiarity now with the process
- Prepare budget early, especially when time costs heavy and/or matter is particularly complex
- Skeleton costs budget from outset useful for case planning, managing client expectations and agreeing fees
- Properly consider contents of Notice for CCMC. Diarise deadlines and note all costs management documents required
- Meticulously mapping out assumptions ensures adequate provision of projected costs
- Have interim statute invoices been raised? Be mindful of the indemnity principle. Check retainer
- Consult appropriate court guide to costs management (Chancery, K&J)
- Be consistent when phasing costs – refer to [CCMC Guidance](#)

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## Budget discussions and report

- Agreed budget phases to be recorded; not open for revision, unless parties agree as per *Pan Nox Emissions Litigations* [2024] EWHC 1728 (KB). *Lemos & Ors v Church Bay Trust Company Limited* [2025] – agree tactically with caution
- Budget discussion report and negotiations – compare assumptions, rates, fee earner grades and hours
  - Alexandra Handy v Dr Mohammed Azhar Aslam & Linia Limited* [2021]
    - Precedent R not filed and served by Defendant as required by CPR 3.13 (2); no clear default position unless when party fails to file costs budget (court fees only)
    - Claimant argued Defendant should be disallowed from making CCMC submissions on basis areas for disagreement not been set out
    - Attempts were made to excuse failure to file Precedent R made by Defendant on grounds of insufficient time
    - Outcome was Claimant's budget approved in full

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## CCMC preparation

- Be prepared to justify rates sought, as rates are usually in the mind of the parties and judge
- Assess the "so-called" seven pillars of wisdom, set out at CPR 44.4(3)
- **Pre-empt the court's stance on reasonableness and proportionality - *Pontis Finance LLP v Karam, Misick & Traube* [2025] EWHC 2236 (Ch)**
- Treat costs budget, assumptions and precedent R as written advocacy
- Costs advocate to know the granular detail well
- Have alternative calculations to hand, where directions differ
- **Important to get budgeting right from the start. Mistakes cannot be rectified - *Murray & Anor v Neil Dowdman Architecture Ltd* [2023] EWHC 874 (TCC)**
- Revise promptly if a significant development in the case

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## Exaggerated Costs Budgets

***Nicholas Worchester v Dr Philip Hooley* [2024] EWHC 2181 (QB)**

- Claimant's budget was £90,000 and Defendant's budget was £183,000. Master Thornett: "The claimant's budget was unreasonable and unrealistic in terms of proportionality, if not to a polarised approach between the parties on budgeting that had prevented settlement and so necessitated a separate hearing. Claimant's budget was reduced by c.53%, but this was still more than 3.5% above the offer made by the Defendant. The Master rejected an argument that budgeting issues should automatically lead to an order for costs in the case. Instead, he held that the Claimant's conduct should lead to an order that the Claimant should pay the costs of the budgeting hearing, with no order for costs of the preliminary hearing. Similar decision in *Shelton v Transport Capital* [2024] EWHC 2248 (QB). The budgeting hearing, with no order for costs of the preliminary hearing. Similar decision in *Shelton v Transport Capital* [2024] EWHC 2248 (QB). The following day, Unreliable figures in the Claimant's budget resulted in the costs of the hearing being a reduction of 29% of the Claimant's costs of the budgeting process.

***OS Woodhead Court GP v LHM & Anor v RSCM LHM & One* [2025] EWHC 385 (TCC)**

- Mr Justice Coulson ordered adverse costs against the Claimant despite the Defendant's budget offers ranging between c.£2.7m to c.£3.5m and approval of the Claimant's budget being c.£4.2m. The reduction from c.£8.7m, "implausible" hours and hourly rates of £1,089 were the issue. The Claimant was to bear all their own costs whilst the Defendants were to recover their reasonable costs, limited to one barrister and one solicitor.

***Zvevoroff v Melnikova* [2025] EWHC 280 (QB)**

- Her Honour Judge Karen Walden-Smith echoed the above, when she said: "The consequences of a costs in the case order always being made in a costs management hearing is that a claimant would be able to seek to push forward entirely unrealistic and ambitious costs budgets without any costs sanction."

Decisions are useful from a paying party perspective. A more just approach would have been to reserve costs so that matters could be considered at a later date, when more known about whether the budget at the CCMC stage was in fact "overstated". It is the size of the costs, rather than a consideration of whether they are proportionate, that strikes judges most.

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## Costs Budgeting Pilot Schemes – reason for change?

### Background

Civil Justice Council's Costs Review of May 2023 identified costs management as having largely achieved its purpose:

to assist the court in managing not only the steps to be taken in litigation but also the costs incurred by the parties, to further the overriding objective of dealing with cases justly and proportionately.

However, it acknowledged:

"one size does not necessarily fit all"

A more tailored approach was recommended.

### Amendment

The 179<sup>th</sup> and 183<sup>rd</sup> Practice Direction updates introduced significant change to the budgeting regime with 3 pilot schemes, which:

- cater for different case types and case values;
- are being tested only in certain courts; and
- run for 3 years.

A new suite of "Z" forms have been introduced.

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## What is it?

A broad/summary analysis of a claim for costs

Costs are NOT assessed on an item-by-item basis

Efficient and costs effective way of assessing costs

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## Presentation for successful outcomes

### The Statement of Costs: What should be Included?

#### CPR 44 CPD 9.5 (2)

- The number of hours to be claimed;
- The hourly rate to be claimed;
- The grade of fee earner;
- The amount and nature of any disbursement to be claimed, other than counsel's fee for appearing at the hearing;
- The amount of legal representative's costs to be claimed for attending or appearing at the hearing;
- Counsel's fees; and
- Any VAT to be claimed on these amounts.

Description of Costs	Hours	Rate	Total

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## Signing, Filing and Service

CPR 44 CPD 9.5 (3) states party or party's "legal representative" to sign

CPR 44 CPD 9.5 (4):

For a fast track trial, not less than 2 days before the trial; and

For all other hearings, not less than 24 hours before the time fixed for the hearing

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Rates, VAT and Interim Statute Invoices: Pitfalls

- Incorrect hourly rates
- Double recovery of VAT
- Profit costs not limited

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Strategy and Submissions at the Interim Application Hearing

- Brief Counsel well
- Factors to be taken into account in deciding the amount of costs (CPR 44.4)
- Be prepared to re-calculate on different GHR

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Practical points

- Laissez-faire approach to statements of costs gone?
- Be organised and respect the process. Don't win but then lose....!
- Use N260A and N260B where applicable
- File and serve on time
- Expect challenges if you do not follow the CPR

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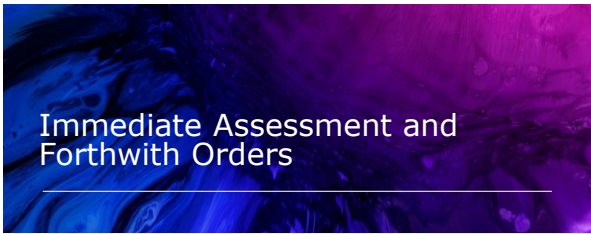
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# Immediate Assessment and Forthwith Orders

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## CPR 47.1

The general rule is that the costs of any proceedings or any part of the proceedings are not to be assessed by the detailed assessment procedure until the conclusion of the proceedings, but the court may order them to be assessed immediately.

PD - 1.1 - 1.4

1.1. For the purposes of rule 47.1, proceedings are concluded when the court has finally determined the matters in issue in the claim, whether or not there is an appeal.....

1.2. The court may order or the parties may agree in writing that, although the proceedings are continuing, they will nevertheless be treated as concluded.

1.3. A party who is served with a notice of commencement.....may apply to a costs judge or a district judge to determine whether the party who served it is entitled to commence detailed assessment proceedings. On hearing such an application the orders which the court may make include: an order allowing the detailed assessment proceedings to continue, or an order setting aside the notice of commencement.

1.4. A costs judge or a district judge may make an order allowing the detailed assessment proceedings to be commenced where there is no realistic prospect of the claim continuing.

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### Example:

The Defendant do pay the Claimant's costs of the application for specific disclosure to be subject to **immediate** detailed assessment, if not agreed.

**Immediate** or **forthwith** are the magic words

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# Payments on Account of Costs

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## Payments on Account

**CPR 44.2(8):** "Where the court orders a party to pay costs subject to detailed assessment, it may order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so."

Reduction of interest payable by Paying Party. Receiving Party should not have to wait. Tactics play a big part in the amount.

**Seymour v Ragley Trust Company Ltd & Anor** [2025] EWHC 3456 (Ch) the court is not bound to make a P/A, but it is required to make such an order unless there is good reason not to do so. Complex issues on detailed assessments was not held sufficient reason to refuse a P/A, but such issues (including misconduct allegations) were taken into account when considering the sum to be paid.

Non-budgeted cases:

**Mars v Teknowledge Ltd** (2008) EWHC 226 (Pat) – 1. Lesser sum than the likely full amount. 2. Rough and ready view 3. 2/3 of rough costs estimated.

**Excilbur Ventures LLC v Texas Keystone Inc and others** [2015] EWHC 566 (Comm) – "not an irreducible minimum" but a "reasonable sum on account of costs." Receiving Party obtained independent advice from costs specialists. Awarded 80% payment on account of likely recovery.

Budgeted cases:

The Court will routinely fix a payment on account by reference to 90% of the agreed and/or approved budgeted sum and circa 70-75% of the "incurred" sum. (**Chapman Finck Ltd v Victoria's Secret UK Ltd** [2014] EWHC 3258 (Ch)); (**Pharmacia v Glaxo** [2017] EWHC 127 (QB)); (**Sheeran v Chokri** [2022] EWHC 1528 (Ch)).

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## Payments on Account

**Learning Curve (NF) Group Ltd v Lewis and Probert** [2025] EWHC 1889 (Comm)

- This case demonstrates how the court approaches payments on account where significant costs will be assessed on the indemnity basis. CPR 3.18 becomes irrelevant, justifying departure from the usual 90% rule, and a 100% payment on account can be justifiable.
- Costs were sought on the standard basis up to the expiry of the relevant period (of the Part 36) and on the indemnity basis thereafter and included costs of a disclosure application made by the Defendants that had been reserved.
- The Claimant sought a payment on account of £1,257,382 which was 100% of its budgeted costs. They referenced that, prior to the PFR, a Precedent T was filed and served which sought an increase in budgeted costs to £1,930,418.
- On determining there was no merit in the Defendant's attempts to cap costs at 50% for alleged claim exaggeration, or not to award costs on the indemnity basis following the expiry of the relevant period, it was decided that the payment on account should be 100% of the claimant's approved costs budget: £1,257,382.
- Distinction drawn because costs were to be assessed on the indemnity basis:

"If there is an order for indemnity costs, then prima facie any approved budget becomes irrelevant. It follows that the reasoning underpinning the approach to a payment on account, does not apply to the significant element of the costs covered by the award of indemnity costs, whether or not they are included in a presently approved budget"

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**Fraser Barnstaple  
Kings Chambers**

*“An update on Mazur”*

# Fraser Barnstaple

Year of call **2024**

	<a href="mailto:lmorrissey@kingschambers.com">lmorrissey@kingschambers.com</a>
	0345 034 3444



Fraser's practice spans the full spectrum of Costs and Litigation Funding to include advice, drafting and advocacy in respect of all inter-partes costs disputes and solicitor-client disputes.

In his time at the bar, Fraser has already been instructed in a number of multimillion-pound costs claims, has appeared in the Court of Appeal and has built up a considerable and impressive level experience of the following types of hearings:

- Detailed assessments (in the SCCO and the County Court);
- Provisional assessment review hearings;
- Fixed costs determinations;
- Costs and Case Management Conferences ("CCMCs");
- Hearings involving the assessment of costs deductions from protected party's damages;
- A range of application hearings involving wasted costs, relief from sanctions, fixed costs challenges, the applicability of QOCS, expert/agency fees, and the setting aside of Default Costs Certificates etc; and
- Hearings in respect of solicitor-client disputes.

Fraser has a busy paperwork practice, and is regularly instructed to draft costs pleadings, which include Points of Dispute and Replies, advices and witness statements, and is well equipped to deal with advising in conference.

Fraser is currently seconded to work one day each week in the costs team of a major national law firm, advising on and drafting pleadings in relation to costs and litigation funding in high value clinical negligence and personal injury matters.

He completed a specialist costs and litigation funding pupillage under the supervision of Kevin Latham, Andrew Hogan and Erica Bedford in 2025.

Prior to beginning his career at the Bar, Fraser worked for over two years as a Senior Underwriter in the ATE legal expenses insurance and litigation funding industry. He remains a member of the Chartered Insurance Institute, having obtained a Level 3 Certificate in Insurance (CII) qualification in August 2024 and therefore is well positioned to deal with matters which straddle an insurance and litigation funding crossover.

## Expertise

### Costs & Litigation Funding

#### Manchester

36 Young Street,  
Greater Manchester  
M3 3FT  
DX: 718188 MCH 3  
Telephone: 0161 832 9082

#### Leeds

5 Park Square,  
Leeds,  
Yorkshire  
LS1 2NE  
DX: 713113 LEEDS PARK SQ  
Telephone: 0113 242 1123

#### Birmingham

Embassy House,  
60 Church Street,  
Birmingham,  
B3 2DJ  
DX: 13023 BIRMINGHAM  
Tel: 0121 200 3570

## Notable Costs & Litigation Funding cases

Acted as junior counsel to Kevin Latham in the Court of Appeal on behalf of the appellant in a Part 36 related appeal.

Acted on behalf of a paying party in the High Court in a detailed assessment following a multi-million-pound serious injury claim. Dealt with the preliminary points of principle, achieving a substantial hourly rate reduction and successfully argued against budget departure.

Advised a receiving party on transitional provisions and procedure in relation to a Privy Council costs assessment, arising out of an unsuccessful permission to appeal application from the Court of Appeal of Trinidad and Tobago following a \$100million commercial contract claim.

Acted on behalf of a receiving party in a 2-day detailed assessment hearing in the SCCO following a long running and highly contentious shareholder dispute, achieving a 90% recovery on the bill of costs.

Acted on behalf of a paying party in a detailed assessment following a housing disrepair claim, achieving an 87% reduction on the bill of costs.

Advised and drafted Replies for a receiving party in a multi-million-pound costs claim arising out of a pre-LASPO clinical negligence claim.

Acted on behalf of claimant clients in Solicitor Act 1974 assessment proceedings

Acted on behalf of a receiving party in an oral review, and successfully argued that it was reasonable to not issue in the RTA Portal, thus avoiding fixed costs.

Acted on behalf of a Defendant in a wasted costs application. Successfully obtained wasted costs order.

Advised a Claimant firm on the interplay between the Montreal Convention and the fixed costs regime.

Acted on behalf of a paying party in a fixed costs determination in respect of disputed expert fees. All issues were determined fully in the paying party's favour.

Acted on behalf of a paying party in a quasi-criminal-civil costs assessment in the Magistrates Court following an appeal of a community protection notice. Successful on all preliminary points of law (including the applicable jurisdiction) and achieved a substantial reduction on the bill.

## Commercial Litigation

Fraser's commercial practice focuses on solicitor-client disputes. Fraser has experience acting for both solicitors in dealing with claims made to recover unpaid debt and for individuals defending claims brought by their former solicitor.

## Memberships

- Association of Costs Lawyers
- Personal Injury Bar Association
- Chartered Insurance Institute
- The Honourable Society of Lincoln's Inn

## Qualifications

- University of Leicester, Law LLB, 2021, 1st Class Hons
- University College London, LLM Laws, 2022, Merit
- City, University of London, Bar Vocational Studies, 2024, Distinction

### Manchester

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Telephone: 0113 242 1123

### Birmingham

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Birmingham,  
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DX: 13023 BIRMINGHAM  
Tel: 0121 200 3570

- Certificate in Insurance (Cert II Level 3), 2024

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# An update on Mazur

Fraser Barnstaple  
fbarnstaple@kingschambers.com

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## Agenda



- Brief recap of the High Court decision
- The real impact of the decision so far
- The Court of Appeal hearing 'highlights'
- Professional negligence risks arising out of *Mazur*



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## Recap of Mazur background



- Charles Russel Speechlys LLP hired GBS (a firm) to recover debt from their previous client, Mrs Mazur
- The Head of Commercial Litigation of GBS, Mr Middleton, primarily handled the case
- Mr Middleton did not have a practicing certificate
- Mrs Mazur made an application for Mr Middleton to be replaced with a qualified solicitor
- HHJ Simpkins rejected the application. Mrs Mazur appealed the decision to the High Court...



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## Recap of Mazur decision



- Decision of of Sheldon J:
  - Mr Middleton was not entitled to conduct litigation under the supervision of the qualified solicitor
  - The Legal Services Act 2007 does not have the effect of allowing employees of authorised persons to conduct litigation
  - There is a distinction between conducting litigation and merely assisting or supporting an authorised person in the conduct of litigation
  - In summary- if a litigator is not authorised within the meaning of the LSA they cannot conduct litigation



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## What happened next?



- Regulatory Responses
  - SRA
  - LSA
  - CILEX
- *Mazur* has been raised in support of various arguments since the High Court decision
  - Both in substantive and costs litigation
- *XX v GH* [2026] EWFC 51 (B)
  - Chartered Legal Executive was denied the right to represent her client in financial remedy / Children Act proceedings



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## Permission to Appeal



- Permission to appeal as an intervening party was sought and obtained by CILEX
- The Legal Services Board, APIL and the Law Centres Federation added as intervening parties. The Law Society and SRA already existed as intervening parties from the High Court appeal
- The hearing took place over three days on the w/c 23 February 2026



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## Court of Appeal hearing: highlights



- CILEX argued that an unauthorised person is permitted to conduct litigation under the supervision of an authorised person provided the authorised person assumed responsibility for and exercises their judgment over that same conduct
  - ‘The [LSA 2007] doesn’t provide for delegation, but we would not expect it to, because of course you can delegate’
- CILEX also argued that finding otherwise would result in significant satellite litigation



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## Court of Appeal hearing: highlights



- SRA argued that legal executives can offer significant assistance and that individual tasks could be delegated. However, caseloads and conduct of cases could not be delegated
- SRA further argued that Parliament had deemed litigation to be a reserved activity and there are at least some people that parliament wanted to exclude from that



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## Court of Appeal hearing: highlights



- Jerome Stuart (husband of Mrs Mazur):
  - ‘We have lost sight of the interests of the public and the consumer, and crucially lost sight of the unrepresented defendant,’
  - ‘It seems to me we have spent the best part of two days dancing on the head of a pin trying to construe the words [conducting litigation]. The ordinary citizen could consider that to carry on the conduct of litigation would simply mean the conduct of litigation. There is nothing more, nothing less.’
  - ‘It is not for the law to be adapted in such a way as to absolve the [legal] industry of any potential responsibility’



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## Mazur and Professional Negligence



- Legal Services Act 2007, s14: it is an offence to carry on an activity which is a reserved activity unless that person is entitled to carry on the relevant activity
- No excuses once the Court of Appeal decision is handed down?
  - Regulatory action
  - Procedural consequences coming back to bite



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## Mazur and Professional Negligence continued



- Costs recoverability could be impacted
- Costs irrecoverable inter partes = problems between the solicitor and client?
- The Mazur decision will impact the costs that are recoverable not only inter partes, but also from the client
- Understanding the CofA judgment, once it is handed down, is critical



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## Questions?



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Thank you.

Speaker: Fraser Barnstaple  
[fbarnstaple@kingschambers.com](mailto:fbarnstaple@kingschambers.com)

Date: 26 March 2026



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**Katy Manley**  
**PNLA President**  
**BPE Solicitors**

*"Closing Remarks"*



**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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