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Professional Negligence
Lawyers Association

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PROFESSIONAL NEGLIGENCE AND LIABILITY UPDATE

EDINBURGH CONFERENCE

Thursday, 29 October 2026

PNLA & WS Society
EDINBURGH CONFERENCE
29th October 2026

0900–0920	Registration and Refreshments
0920–0930	"*Welcome and introduction*" **Tim Edward, Partner, BTO & PNLA Scotland Representative** **& Ashley Jones, Partner, Burness Paul & PNLA Scotland Representative**
0930–1000	*Keynote Address – "Regulation of the Scottish Legal Profession"* **The Rt Hon Lord Ericht WS, Senator of the College of Justice**
1000–1030	*"The Comino Properties Ltd v DHKK Ltd decision"* **Sheriff Kenneth Campbell KC – Edinburgh Sheriff Court**
1030–1045	*"Questions and discussion"* **Tim Edward, BTO & PNLA Scotland Representative** **& Ashley Jones, Burness Paul & PNLA Scotland Representative**
1045–1100	Refreshments
1100–1140	*"Considering the Resolution of Professional Negligence cases"* **The Hon. Lady Sarah Wolffe – Axiom Advocates**
1140–1220	*"Professional Liability and the Rise of AI, from the Perspective of English Law"* **William Flenley KC – Hailsham Chambers**
1220–1250	*"Professional Indemnity Insurance – Claims & Risk Management"* **Mark Gray – Lockton Companies LLP**
1250-1300	*"Questions and discussion"* **Tim Edward, Partner, BTO & PNLA Scotland Representative** **& Ashley Jones, Burness Paul & PNLA Scotland Representative**
1300–1400	Lunch
1400–1440	*"PI claims – a Defender's perspective"* **Lynsey Ogunyemi – Partner & Andrew McConnell – Partner, Beale & Co**
1440–1520	*"Professional Negligence & Liability Update"* **Neale Tosh – Axiom Advocates**
1520–1535	Refreshments
1535–1605	*"The Daily Mail Phone Hacking Trial & ATE – What Happens when it all goes wrong"* **Matthew Pascall – Temple Legal Protection**
1605–1635	*"Accounting/audit negligence litigation, damages and quantification"* **Graeme Milloy – 1Six Chambers**
1635–1700	*"Short panel session (Thoughts/hot topics in prof neg)* *followed by Final Q&A and closing remarks"* **Tim Edward, Partner, BTO & PNLA Scotland Representative** **& Ashley Jones, Burness Paul & PNLA Scotland Representative** **& Katy Manley, PNLA President & BPE Solicitors LLP**

WS SOCIETY / PROFESSIONAL NEGLIGENCE AND LIABILITY
Edinburgh Conference
Thursday 29th October 2026

ATTENDEES (1 of 3)

The Rt Hon Lord Ericht WS	Senator of the College of Justice	Edinburgh
Sheriff Kenneth Campbell KC	Edinburgh Sheriff Court	Edinburgh
Victoria Arnott	Axiom Advocates	Edinburgh
Patrick Barnett	Addleshaw Goddard	Edinburgh
Louise Chopra	TLT	Bristol
Scott Clair	Advocates	Edinburgh
Will Cole	BTO	Edinburgh
Olivia Coyle	BTO Solicitors	Glasgow
Stuart Craig	DAC Beachcroft Scotland	Edinburgh
Tim Edward	BTO & PNLA Scotland Representative	Edinburgh
Colette Finnieston	Kennedy Slaw	Edinburgh
William Flenley KC	Hailsham Chambers	London
Andrew Foyle	Shoosmiths	Edinburgh
Mark Gray	Lockton Companies	Edinburgh
Ed Grundy	MBM Commercial	Edinburgh
Kym Haley	Kennedy Slaw	Edinburgh
Julie Hamilton	Morton Fraser MacRoberts	Edinburgh
Paul Haniford	Thorntons	Perth
Gillian Harman	DAC Beachcroft Scotland	Edinburgh
Gavin Henderson	Kennedys Scotland	Edinburgh
Naomi Henderson	DWF	Edinburgh
Antony Jones KC TD	Faculty of Advocates	Edinburgh
Ashley Jones	Burness Paul & PNLA Scotland Representative	Edinburgh
Sukhbir Kaur	Temple Legal Protection Limited	Surrey
Callum Kennedy	Blackwood Smith	Edinburgh

Anne Kentish	**Kennedys Scotland**	**Edinburgh**
Martin Kotsev	**Morton Fraser MacRoberts**	**Edinburgh**
Andrew Little	**Burness Paull**	**Edinburgh**
Callum Mackinnon	**Beale & Co**	**Glasglow**
Katy Manley	**PNLA President & BPE Solicitors**	**Cheltenham**
Grant Markie	**Advocates Library**	**Edinburgh**
Alisdair Matheson	**Brodies LLP**	**Glasgow**
Andrew McConnell	**Beale & Co.**	**Glasgow**
Louise McDaid	**Burness Paull**	**Edinburgh**
Alannah McGinley	**Axiom Advocates**	**Edinburgh**
Paul McIntosh	**Aberdein Considine**	**Edinburgh**
Alan W D McLean KC	**Advocates Library**	**Edinburgh**
Meriel Miller	**Burness Paull**	**Edinburgh**
Graeme Milloy	**1Six Chambers**	**Edinburgh**
Sophie Mills	**WS Society**	**Edinburgh**
Karen Motion		**Edinburgh**
Bobby Murray	**Harper Macleod**	**Edinburgh**
Pete Murrin	**Turcan Connell**	**Edinburgh**
Brooke Nisbet	**CMS Cameron McKenna Nabarro Olswang**	**Edinburgh**
Laura Noble	**Freeths**	**Glasgow**
Lindsay Ogunyemi	**Beale & Co.**	**Glasgow**
Susan Ower	**Axiom Advocates**	**Edinburgh**
Matthew Pascall	**Temple Legal Protection**	**Guilford**
Luke Pelosi	**Burness Paull**	**Edinburgh**
Tomas Pizarro-Escuti	**The WS Society**	**Edinburgh**
Jamie Robb	**Brodies**	**Edinburgh**

Max Roper	**DWF LLP**	**Edinburgh**
Maria Savage	**DWF LLP**	**Edinburgh**
Kirsty Shaw	**Advocates**	**Edinburgh**
Cady Shearsmith	**WS Society**	**Edinburgh**
Morag Shepherd	**NHS Scotland**	**Edinburgh**
Eileen Sherry	**Beale & Co**	**Glasglow**
Murray Steel	**Axiom Advocates**	**Edinburgh**
Kirsten Thomson	**Addleshaw Goddard**	**Leeds**
Neale Tosh	**Axiom Advocates**	**Edinburgh**
Sarah Wardell	**Davidson Chalmers Stewart**	**Edinburgh**
Rowena Williams	**CMS Cameron McKenna Nabarro Olswang**	**Edinburgh**
The Hon. Lady Sarah Wolffe	**Axiom Advocates**	**Edinburgh**

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Tim Edward
Partner – BTO
&
Ashley Jones
Partner – Burness Paull

"Welcome and Introduction"



Tim Edward

Partner, Solicitor Advocate
Dispute Resolution/Professional Liability
Edinburgh
tje@bto.co.uk
(0)131 222 3246

Tim is a Partner in the Dispute Resolution team, specialising in professional liability work and commercial and insolvency disputes.

He has over 35 years of experience in the profession and has been a Solicitor Advocate since 1999.

Tim has served over many years both as a member of the Law Society of Scotland's Pursuers' Panel and the Law Society Master Policy Defence Panel.

He has experience in both pursuing and defending claims and the ability to use all forms of ADR and Court process to achieve the best results for clients.

Tim is recommended by The Legal 500 for Commercial Litigation and Insolvency & Corporate Recovery and ranked by Chambers UK for Litigation and Professional Negligence in Scotland.

Tim is an Accredited Mediator and Accredited Specialist in Professional Negligence – The Law Society of Scotland

His Experience includes representing

- Pelvic Mesh manufacturers Cousin Biotech in group product liability proceedings.
- A former director of Stewart Milne Homes in a breach of contract case which went to the UK Supreme Court.
- The Takeover Panel in proceedings against David King of Rangers FC.
- Esso Petroleum in environmental proceedings against the Scottish Government and others.
- Scottish Widows in successfully defending a number of actuaries' negligence cases.

Legal Directory Rankings

- Hall of Fame: Commercial Litigation (Scotland) – Legal 500 UK 2027
- Band 3: Professional Negligence (Scotland) – Chambers UK 2027

Burness Paull



Ashley Jones

Partner
Dispute Resolution/Professional Negligence
Edinburgh
ashley.jones@burnesspaull.com
0131 473 6037

Ashley is a partner within our Dispute Resolution team who specialises in the field of professional negligence. She heads the firm's centre of excellence for professional negligence disputes.

A seasoned commercial litigator for almost 20 years, Ashley has a successful track record of acting for both professional indemnity insurers and commercial clients in high value, complex, professional negligence claims. She brings her knowledge and experience of acting for insurers to both the pursuit and defence of claims.

Ashley has successfully handled complex and high value professional liability disputes across a wide range of industry sectors including construction, property, corporate finance, financial services, pensions and insolvency.

Clients include insurers, professional services firms, commercial clients and private individuals. She has acted in disputes involving lawyers, accountants, engineers, insolvency practitioners, architects, surveyors and construction professionals.

In additional to her first class credentials in the professional liability arena, Ashley has significant experience of advising on insurance policy coverage disputes, shareholder disputes and contractual disputes. She has particular experience of cases involving allegations of fraud, breach of trust and breach of fiduciary duties.

Ashley is accredited by the Law Society of Scotland as a specialist in Professional Negligence law as well as being recognised for that work in both Chambers & Partners and Legal 500.

"She is very organised and easy to work with"
Chambers 2022

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The Rt Hon Lord Ericht WS

Keynote Address
– "Regulation of the Scottish Legal Profession"



The Rt Hon Lord Ericht WS

The Rt Hon Lord Ericht WS (Andrew Fleming Stewart) is a Scottish judge currently serving as a judge of the Inner House of the Court of Session. He sits in the First Division of Scotland's supreme civil court, having been elevated to the Inner House in February 2025.

Additionally, in January 2026, he was appointed by the Lord President to the critical position of Regulatory Judge to oversee the implementation of the Regulation of Legal Services (Scotland) Act 2025

Judicial Career & Current Roles

- Inner House of the Court of Session: Appointed in February 2025 to handle high-level appeals.
- Regulatory Judge: Appointed in January 2026 to support the Lord President on regulatory issues and professional legal frameworks.
- Senator of the College of Justice: Originally installed to the Supreme Courts bench in May 2016.
- Specialist Tribunals & Courts: He has extensive experience in specialized jurisdictions, having served as a Commercial Court judge, Chairman of the UK Competition Appeal Tribunal, and Judicial Lead for the Upper Tribunal for Scotland.

Legal & Professional Background

Before his appointment to the bench, Lord Ericht built a prominent career specializing in commercial, tax, and public law:

- Early Career: He qualified as a solicitor in 1988, practicing with Clifford Chance and Tods Murray WS.
- Advocate & Silk: He was admitted to the Faculty of Advocates in 1996 and appointed Queen's Counsel (now King's Counsel) in 2009.
- Public Appointments: He served as Standing Junior Counsel to the Department of Trade and Industry (2000–2009) and worked as an Advocate Depute (2009–2013) prosecuting serious crimes.
- Pre-Judicial Leadership: He is a former President of the Scottish Tax Tribunals and former President of the Appeal Tribunal of ICAS.

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Sheriff Kenneth Campbell KC
Edinburgh Sheriff Court

"The Comino Properties Ltd v DHKK Ltd decision"



Sheriff Kenneth Campbell KC
Edinburgh Sheriff Court

Sheriff Kenneth Campbell KC is a full-time Sheriff of Lothian and Borders, sitting at Edinburgh Sheriff Court since his appointment in September 2020.

Judicial Roles & Responsibilities

- Administrative Sheriff: He serves as the Administrative Sheriff for the All Scotland Sheriff Personal Injury Court, which handles specialised personal injury cases nationwide from its base in Edinburgh.
- Committee Work: He is a serving member of the Scottish Civil Justice Council's Rules Rewrite Working Group, contributing to the modernization of civil court procedures.

Background & Career History

Before joining the bench, Sheriff Campbell had a distinguished legal career spanning nearly 30 years:

- Advocate & Silk: He was called to the Scottish Bar as an advocate in 1996 and took silk (appointed Queen's Counsel, now King's Counsel) in 2011. He was also a practising barrister of the English Bar.
- Civil Litigation: Prior to his advocacy work, he trained at Dickson Minto and worked as a civil litigation solicitor at Brodies. His practice covered complex civil work, leading to appearances in courts at all levels, including the UK Supreme Court.
- Tribunal & Education Work: He previously served as a legal member for both the Mental Health Tribunal for Scotland and the First-tier Tribunal (Tax Chamber). He was also the Director of Training and Education at the Faculty of Advocates between 2002 and 2005.
- Education: He is a graduate of Glasgow University and later pursued a PhD at the University of Edinburgh Law School.

Old duties, new duties: surveyors, home reports, & “reasonable skill and care”

PNLA Conference 29 October 2026
Sheriff K J Campbell KC

1

- *Comino Properties Ltd v DHKK Ltd*
- Edinburgh Sheriff Court 16 October 2025, Sh O’Carroll
- [2025] SC EDI 78
- 2025 GWD 43-405

2

Background

- 2022 property purchase.
- Home Report included survey by defender.
- Renovation works - structural problems emerged.
- Pursuer instructed a structural engineer, and serious structural defects were thereafter discovered.
- Repairs were therefore required, at a cost of £70,000.
- The pursuer also averred a loss of profit of around £74,000.

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Statutory context

- Housing (Scotland) Act 2006, Part 3
- Housing (Scotland) Act 2006 (Prescribed Documents) Regs 2008 [SSI2008/76]
- Housing (Scotland) Act 2006 (Consequential Provisions) Order 2008 [SSI 2008/1889]

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Art 3 Consequential Provisions Order

3.(1) If the buyer of a house has–
(a) obtained a copy of a prescribed survey report under section 99(1) of the 2006 Act in respect of that house; and
(b) suffered material loss as a result of the report not meeting any of the requirements in paragraph (2), the buyer has a right to damages against the person who prepared the report.

(2) The requirements are that the prescribed survey report–
(a) is based on an inspection of the house;
(b) has been prepared in a fair and unbiased way;
(c) has been prepared with reasonable skill and care.

(3) For the purposes of this article, material loss has been suffered when–
(a) the market value of the house on the date of the prescribed survey report is materially lower than the value given in the prescribed survey report; and
(b) the buyer has paid more than the market value of the house

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Parties' positions

Defender

- Ordinary prof neg principles apply
- "Reasonable care and skill"
- Survey must be prepared by Chartered Surveyor
- *Hunter v Hanley* applies
- Damages

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Parties' positions – cont.

Pursuer

- Right of action from Consequential Provisions Order
- All elements pled
- Not every case requires *Hunter v Hanley* averments
- *Hyde & Associates v JD Williams & Co* [2001] PNLR 8 – situations where *Bolam* does not apply
- Damages

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Court's decision

- Art 3 Consequential Provisions Order
- "reasonable skill and care" incorporates common law standard
- Alleged defects fell within surveyor's professional assessment and judgment
- *Hunter v Hanley* averments required
- Pursuer's averments did "not come close"

8

Court's decision (2)

- Damages issue
- Art 3 defines "material loss"
- Art 3(2) imports common law principles
- Pursuer failed

9

Observations

- Construction of the duty in Art 3 Consequential Provisions Order required consideration of the whole statutory context
- Analogies from other legislation, e.g. Supply of Goods and Services Act 1982, s13; Consumer Rights Act 2015, s 49
- *Abramova v Oxford Institute of Legal Practice* [2011] EWHC 613 (QB) , per Burnett J at para 61:
  "...a claimant must generally establish a breach of duty/contract which satisfies the *Bolam* test."

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Observations (2)

- *Hunter v Hanley* in all cases?
- Answer: don't panic
- Extreme cases – where the fault is so obvious – may not require *Hunter v Hanley* averments or a report
- No change in formulation of vast majority of cases

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Observations (3)

- Damages point
- Common law principles applied unless expressly disapplied by statute (they were not)

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"Questions and discussion"

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The Hon. Lady Sarah Wolffe
Axiom Advocates

"Considering the Resolution of Professional Negligence cases"

Axiom



The Hon. Lady (Sarah) Wolffe

Year of Call
1994

Year of Silk
2008

Email
lady.wolffe@axiomadvocates.com

Areas of expertise

- Commercial
- Insolvency
- Professional Liability and Regulation

Professional information

2014: Appointed a Judge of the Court of Session, appointed Commercial Judge (2016-2017, and 2018-2021), and in that role, also appointed as Arbitration, Insolvency Judge,
1994-2014: Practised at the Bar in Scotland (QC 2008)
1989: LLB with Distinction, University of Edinburgh,
1984: BA (summa cum laude & Phi Bet Kappa), Dartmouth College, New Hampshire, USA.

Current appointments
• President of the Court of the Scottish Arbitration Centre,
• Senior Legal Chair, Discipline Tribunals of the Financial Reporting Council (2022-ongoing),
• Honorary Chair, Edinburgh Centre for Commercial Law, Edinburgh University (2019-ongoing),
• Honorary Professor, University of Edinburgh (2021-ongoing) (Commercial Law),
• Professor of Practice, University of Strathclyde (2021-ongoing) (Commercial, Dispute Resolution, Financial Regulation, International Business Law),
• Member, Executive Committee, Conference on European and Restricting Law ('CERIL', an independent invitation-only body promoting reform of EU insolvency law (2020-ongoing).
Professional experience

Sarah Wolffe is a member of Axiom, accepting arbitral appointments and opinion work.

Appointed to the Court of Session bench in 2014, Sarah sat as one of the specialist Commercial Judges for a total of 5 years (2016-17, 2018-2021). This included sitting as an insolvency judge and as an arbitration judge for those years, dealing with cases under the Arbitration (Scotland) Act 2010. As senior counsel, she was also involved in some of the earliest cases coming to the Court of Session under the 2010 Act. In 2023 Sarah was appointed as the President of the Court of the Scottish Arbitration Centre ('SAC'). In that capacity, she has also contributed to training days under the auspices of the SAC.

Select publications

Publications (academic and professional) (Forthcoming and past)Scottish contributor to McGillivray on Insurance Law (numerous editions, 16th forthcoming).

Forthcoming: a chapter in each of the following multi-author volumes:
(i) Development of the Commercial Law in Scotland, volume 1 (Edinburgh University Press),
(ii) Scots and Scots Law Influence on the EU Judiciary (Radboud University Press, Nijmegen, NL), and
(iii) Women, Law and Legal Work in Scotland: Dialogues about our Past, Present and Future (Edinburgh University Press).
Past publications include:
(i) Green's Annotated Rules of the Court of Session 1994, contributor,
(ii) Mithani on Directors' Disqualification, Scottish contributor (two editions),
(iii) 'Judicial and Other Remedies', Stair Memorial Encyclopaedia, co-author (with Lord Dervaird).

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William Flenley KC
Hailsham Chambers

"Professional Liability and the Rise of AI, from the Perspective of English Law"

hailshamchambers

Clerks: **020 7643 5000**

William Flenley KC

Call: 1988 | Silk: 2010



Overview

"William is the best professional negligence barrister in the UK. His approach (beyond meticulous) and manner (friendly and affable whilst brutally honest when needed) are both perfect for the kind of work we do" (*Chambers Directory 2024*).

“He is the pre-eminent professional negligence lawyer and is very approachable and technically adept. Clients love him too.” (*The Legal 500 2023.*)

William Flenley KC specialises in all aspects of professional liability, and related insurance issues. His recent cases in the law reports include appearing

- in the Court of Appeal and the Commercial Court in the leading case on the meaning of ‘to condone’ in the solicitors’ Minimum Terms for insurance (Axis v Discovery Land [2024] PNLR 16),
- in the principal authority on the mental element of dishonest assistance in breach of trust (Group Seven v Nasir, [2020] Ch 129), and
- in a wasted costs application in complex multi-party proceedings in the Commercial Court (King v Stiefel, reported at [2023] PNLR 18).

William is also instructed as an arbitrator, mediator and adjudicator, and worked on the design of the Professional Negligence Bar Association’s adjudication scheme.

He is the co-author, with Mr Justice Leech, of the leading text on claims against solicitors, The Law of Solicitors’ Liabilities, first published in 1999 and now in its fourth edition. He is a former Chair of the Professional Negligence Bar Association, has contributed to Professional Negligence and Liability and Cordery on Legal Services, and was deputy editor of Lloyd’s Reports: Professional Negligence. He is a Bencher of the Middle Temple, and Vice-Chair of its Estates Committee. He has been recommended for professional negligence in the leading directories for many years. He is regularly invited to speak at industry events. In 2026 he has been nominated for Professional Negligence Silk of the Year.

William is a former board member of homelessness charities Bondway and Thames

Reach Housing Associations.

Professional liability

Accountants & auditors

William acts in complex and large-scale claims against auditors and accountants. This includes advising in the defence of a £20m claim against auditors for alleged failure to report fraud, and a £5m claim against auditors in relation to the sale of a national chain of retailers.

Insurance brokers

William's work involving insurance brokers includes acting in claims relating to alleged failures concerning business interruption cover, and failures to give proper advice concerning a burglar alarm warranty. In this area, William additionally benefits from his substantial experience of dealing with insurance coverage disputes between insured and insurer.

Financial professionals

William is active in this area of work and has acted for financial advisors in a 14-party claim under the Financial Services and Markets Act and at common law, listed for a 4 week trial before it settled, and a £500,000 claim against financial advisors in relation to their alleged promotion of an investment bond which failed.

Lawyers

William is co-author of the leading text *Flenley & Leech, Solicitors' Negligence & Liability*, now in its third edition. He regularly advises and appears in high value and complex claims against lawyers. Recent cases include *Group Seven and Giambrone*, both mentioned at the start of this c.v.

Surveyors & valuers

William is very familiar with claims against surveyors and valuers, including mortgage lenders' and contribution claims. He wrote the discussion of *SAAMCo in Professional Negligence and Liability* (ed.Simpson). In *Nationwide BS v Dunlop Haywards* [2010] 1 WLR 258, a lenders' claim, he obtained an order that fraudulent surveyors pay contribution of £4.5m. He also acts in claims by purchasers against surveyors, and recently represented surveyors in a complex case as to whether purchasers should give credit for improvements to their property after the date of the surveyors' negligence.

Mediation

William is a trained mediator and, at the invitation of the parties, recently gave early neutral evaluation of a claim’s merits. He also appears as a mediation advocate, advising on whether and when to mediate and preparation for mediation, settling mediation statements and appearing at mediations.

Insurance coverage

William regularly deals with a variety of issues relating to insurance coverage, particularly in connection with professionals, often appearing at arbitrations, as well as acting as an arbitrator in this context. Recent work has involved a £10m coverage dispute in relation to insurance of wind farms, which settled, and successfully showing lack of cover under the Solicitors’ Minimum Terms in relation to over 50 claims.

Arbitration and adjudication

William appears at arbitrations and as an arbitrator (see the last heading), and has been involved in the launch of an Adjudication scheme for professional liability cases. He has acted as an adjudicator under that scheme, having previously undertaken a short course in Adjudication at University College, London.

What others say

"William is incredibly bright but is able to explain complicated issues to clients in a way which is easy to understand. His advocacy style involves forensic analysis with a real attention to detail." *Legal 500, 2026*

"William is a go-to counsel on solicitors' cases." *Chambers UK, 2025*

"William is very impressive, quick to respond, user-friendly and very intellectually imaginative." *Chambers UK, 2025*

"William is a fantastic silk and a leader in his field. Not only is he excellent with clients but he's extremely user-friendly and will maintain a strategic focus throughout." *Chambers UK, 2025*

"William has an encyclopedic knowledge of the law and is an excellent advocate in court." *Legal 500, 2025*

"William is the best professional negligence barrister in the UK. His approach (beyond meticulous) and manner (friendly and affable whilst brutally honest when needed) are both perfect for the kind of work we do." *Chambers UK, 2024*

"William is an expert in this field. He is incredibly intelligent, hard-working and technically adept but he is also prepared to think outside the box." *Chambers UK, 2024*

"William is very approachable and has an excellent way with clients." *Chambers UK, 2024*

"William gets straight to the heart of the matter. Makes the complex simple." *Chambers UK, 2024*"

Clear, considered, detailed and well structured advice, both written and in conference. Understanding and considerate of views of clients. Always fabulously well prepared. Respectful and never too busy to discuss." *Legal 500, 2024*

"William is unrivalled in his attention to detail; there is absolutely no way that William would ever take a matter to trial that he does not know inside out and backwards. You just know that everything will be done right." *Chambers UK, 2023*

"He is is the pre-eminent professional negligence lawyer and is very approachable and technically adept. Clients love him too." *Legal 500, 2023*

“He’s a very cerebral barrister and fantastic to work with.” “He’s fantastic, the perfect foil to difficult clients. You can be confident that he’s looking unemotionally at the issues, not getting distracted by the heat and noise.” “Quite simply the best in my opinion. He’s excellent, not only extremely bright but user-friendly and really good with clients, and responsive. He lives up to his reputation.” *Chambers UK, 2022*

"Very willing to listen to the ideas of others and assimilate them as necessary. Very experienced indeed in solicitor negligence and insurance coverage. Gives extremely clear advice. Very good on tactics and thinking through the consequences of strategic decisions." *Legal 500, 2021*

“His knowledge and ability to get to grips with the evidence is impressive.” *Chambers UK, 2021*

“A top KC because he is incredibly intelligent and hard working.” *Chambers UK, 2021*

“His technical attention to detail is fantastic and we are confident that he’ll sort through everything carefully and properly.” *Chambers UK, 2020*

“An outstandingly good performer in his field.” *Chambers UK, 2020*

“When it comes to professional liability, there can be few at the Bar who are as knowledgeable and as skilled as he is” *Legal 500, 2020*

“He is outstanding technically, and just completely straightforward and transparent – no pomposity or flannel. I know he gives me the right advice, without any attached motive” *Chambers UK, 2019*

“An impressive advocate with some fearsome intellect. He instantly gets to the nub of the issues and comes up with novel arguments to blow the other side’s case out of

the water" *Chambers UK, 2019*

"He is fabulously persuasive in court and his advice is clear, concise and utterly reliable" *Legal 500, 2019*

"He has phenomenal knowledge and an amazing mind. Judges really listen to him. He's a great talent" "Extremely knowledgeable in dealing with complex solicitors' claims" *Chambers UK, 2018*

"He is approachable and user-friendly, and has the gravitas required to intimidate the opponent" *Legal 500, 2017*

"William Flenley is concise, and incredible likeable as well." *Chambers UK, 2017*

"Technically very strong" *Legal 500, 2016*

Chambers UK, 2016 said that he "has a wealth of experience acting in all kinds of major negligence claims, including those brought against barristers, financial advisers and insurance brokers. Frequently instructed to act in the most sophisticated matters at the cutting edge of the field."

"Extremely tenacious and thorough". *Legal 500, 2015*

"an eye for detail and is very good at thinking outside the box." "He is very clever, meticulous in his approach and an excellent cross-examiner." *Chambers UK, 2015*

"excellent analytical skills." *Legal 500 2014*

"a real favourite of large insurers, and a lawyer with particular expertise on solicitors' negligence cases. 'Meets deadlines, gives clear advice and is also exceedingly nice'. 'He's a quick-witted advocate'." *Chambers UK, 2014*

Notable cases

Axis v Discovery Land [2024] PNLR 16 – solicitors' professional indemnity insurance, meaning of 'to condone', aggregation.

King v Stiefel [2023] PNLR 18 – the test for stage 1 of a wasted costs application in the context of complex Commercial Court litigation.

Discovery Land v Axis [2021] Costs LR 777. Costs budgeting in the Commercial Court.

Addlesee v Dentons Europe [2020] Ch 243, Court of Appeal authority on what happens to the legal professional privilege of a company after it has been dissolved.

Group Seven v Notable Services [2020] Ch 129, the most recent Court of Appeal authority on the mental element of dishonest assistance in breach of trust.

Various Claimants v Giambrone [2018] PNLR 2, breach of trust and the application of BPE and Saamco to claims against lawyers.

Purrunsing v A'Court [2016] 4 WLR 81, (Ch Div), identity fraud, liability of lawyers acting for buyer, and for seller. Widely discussed in the legal press.

Harding Homes v BDB [2015] EWHC 3329 (Ch), successfully proved that solicitors who admitted negligence re banking security documents had caused no loss.

Edwin Coe v Aidiniantz [2015] 1 Costs L0 129, assessment of solicitor's costs, s.70 Solicitors Act 1974.

Credit & Mercantile v Nabarro [2015] PNLR 14 (Ch Div), achieved summary judgment for the defendant in limiting damages for professional negligence to diminution in value.

Nationwide BS v Davisons [2013] PNLR 12. Court of Appeal authority on claims against solicitors for breach of trust and allegations of breach of strict contractual duty.

St Anselm v Slaughter & May [2013] EWHC 125 (Ch), acting for the defendant, struck out half of claim on limitation grounds.

Hellard v Irwin Mitchell [2013] PNLR 8 implied waiver of privilege as to evidence of barristers.

Nationwide BS v Dunlop Haywards [2010] 1 WLR 258, [2009]. An important decision on contribution between valuers and solicitors in lenders' claims.

Pickthall v Hill Dickinson LLP [2009] EWCA Civ 643, and [2009] PNLR 10. Limitation and abuse of process.

Taylor Walton v Laing, [2008] PNLR 11. Solicitors' negligence, successful strike out of relitigation as abuse of process (also the subject of a feature article in The Times).

Stone Heritage v Davis Blank Furniss, [2007] EWCA Civ 765, [2007] 31 EG 80 (CS): successful appeal on scope of solicitor's duty to give commercial advice.

Luke -v- Wansbroughs [2005] PNLR 2, QBD: duty of barristers and solicitors in the conduct of litigation.

Luke -v- Kingsley Smith & Co [2004] PNLR 12, QBD: test in law as to when solicitors and barristers may seek contribution from each other.

Laib -v- Aravindan [2003] EWHC 2521, QBD, The Times, 13 November 2003: claim for loss of litigation, accrual of cause of action.

Direct Line Insurance v Khan [2002] Lloyd's Rep IR 364, CA: insurance; joint policy; whether fraud of one policyholder entitled insurers to recover sums paid to both policyholders.

Ruparel v Awan [2001] Lloyd's Rep PN 258, Ch D. Enforcement of solicitors' undertakings and the Partnership Act; whether work done in the ordinary course of solicitor's business.

Jenmain Builders v Steed & Steed [2000] PNLR 616,CA. Measure of damages for professional negligence, whether loss of profits recoverable.

Matlock Green Garage Ltd v Potter Brooke-Taylor & Wildgoose [2000] Lloyd's Rep PN 935, QBD: measure of damage for solicitors' negligence leading to loss of business tenancy; valuation of tenancy.

Nationwide BS v Balmer Radmore [1999] Lloyd's Rep PN 241, [1999] PNLR 606, Ch D. Managed list of 400 cases relating to solicitors' liability to mortgage lenders, contributory negligence in solicitors' cases, breach of fiduciary duty, relevance of surveyors' negligence. Specifically, William acted as junior counsel in:

- *Nationwide Building Society v. A.T.M. Abdullah* [1999] Lloyd's Rep PN 616, Ch D: causation, role of surveyors
- *Nationwide Building Society v Vanderpump & Sykes* [1999] Lloyd's Rep PN 422, Ch D: fraud/breach of fiduciary duty
- *Nationwide Building Society v Littlestone & Cowan* [1999] Lloyd's Rep PN 625: terms of solicitor's duty to report to lender

Bristol & West Building Society v. Daniels & Co [1997] PNLR 323,Ch D. Solicitors' negligence/breach of fiduciary duty.

Melinek & Back [1997] BPIR 358, The Times 10 April 1997, ChD. Solicitors' negligence, insolvency law.

Mahoney v. Purnell [1996] 3 All ER 6 QBD. Solicitors' negligence, accountants' negligence, undue influence.

R v. Poole BC, ex parte Cooper 27 HLR 605, Crown Office List. Judicial review, homelessness.

Irtelli v. Squatriti [1993] QB 83, CA. Contempt of court.

Further information

Publications

Co-author, *Solicitors' Negligence and Liability* (Flenley & Leech, 3rd ed., 2013).

An original contributor to *Professional Negligence and Liability* (Informa): sections on *SAAMCo*, causation, mitigation, contribution.

A former contributor to *Cordery on Legal Services.*

Formerly assistant general editor, *Lloyd's Reports: Professional*

Negligence (2000-2003).

Ough and Flenley, *The Mareva Injunction and Anton Piller Order* (2nd ed., 1993): freezing orders, search and seizure orders.

He has also spoken at professional negligence events organised by CLT, Informa, Lexis Nexis, the insurers' Professional Indemnity Forum, the Professional Negligence Law Association, and the Professional Negligence Bar Association (PNBA), including webinars. From 2007 until 2010, he was co-chair of the annual PNBA Lawyers' Liability Day.

Education

MA (Oxon) (Jurisprudence) (1985), Open Exhibition

LL M (Cornell Law School, USA), St Andrew's Society of the State of New York Scholar (1986)

BCL (Oxon) (1987), Middle Temple Astbury scholarship (1988)

Mediation training (ADR Chambers)

Appointments

Part-time lecturer in Law, London School of Economics, 1988-89

Bencher of the Middle Temple, 2014

Committees

Executive Committee, Professional Negligence Bar Association, 2004-2015; Vice-Chairman 2011 to 2013; Chairman 2013 to 2015.

Since 2015, he has sat on a committee seeking to introduce a scheme of Adjudication to Professional Liability cases.

Member, Board of Management, Thames Reach Housing Association, a charity for people who are homeless or in danger of homelessness in London.

ICO Data protection registration number: **Z6874737**.

William Flenley KC is a barrister regulated by the Bar Standards Board. Click to view William Flenley KC's Privacy Notice.





Mark Gray
Lockton Companies LLP

"Professional Indemnity Insurance – Claims & Risk Management"



Mark Gray

Client/Claims Director

mark.gray@lockton.com
+44 13 1345 5557

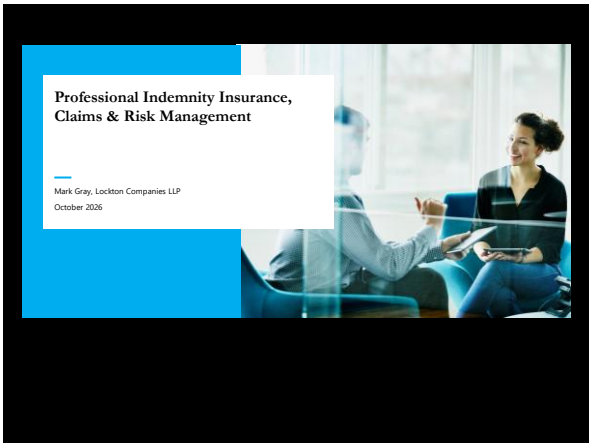
Mark Gray is a senior insurance professional at Lockton Companies LLP, serving as the Head of Office for Lockton in Edinburgh, Scotland.

With over 35 years of experience in the insurance sector, he specializes in professional indemnity and financial lines.

Core Responsibilities & Specialisms: Scottish Legal Master Policy: Gray is prominent for leading the dedicated Lockton Companies LLP team that handles the broking, administration, and claims management for the Law Society of Scotland's Master Policy. This is the compulsory professional indemnity insurance framework protecting all private practice solicitor firms across Scotland. Lockton was successfully reappointed to this prestigious position for an additional five-year term running from 1 January 2027.

Mid-Market Professions Leader: He acts as a key Service Leader within Lockton's Mid-Market Professions division, providing comprehensive placement and risk advisory services to professional firms, including solicitors, accountants, independent financial advisers (IFAs), and surveyors.

Claims Expertise: Throughout his tenure, Gray has held parallel duties as a Client Director and Claims Director. He leverages a deep background in managing contentious and high-value professional liability claims to secure optimal indemnity outcomes for clients.



1

Agenda

- Professional Indemnity Insurance
- Claims
- Risk Management
- Cyber
- AI
- Resources



2

LOCKTON
UNCOMMONLY INDEPENDENT

Professional Indemnity Insurance

- Market Conditions
- Insurer Capacity
- Coverage - Minimum Terms versus Open Market
- Premiums

3

Claims



- Solicitors
- Construction & Property
- FCA Regulated Practices
- Accountants

4

Risk Management – Pain Points

- Supervision and Training
- Letters of Engagement
- Dabbling
- Critical dates and diary management
- File management

5

Cyber Risk

- Who is the target
- What's your defence
- What's your protection

6

AI

- An Underwriters view
- What are the essentials from a risk perspective
- AI – Firm Policy
- Confidentiality and Data Protection

7

Lockton Resource Centre

- Interactive CPD modules
- Comprehensive guides
- Checklists
- Client Questionnaires
- Templates
- Journal risk management articles



8

Phishing E-learning modules



9

Contact us

Mark Gray
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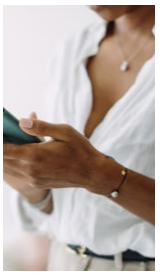
0131 345 5557







"Questions and discussion"





Lynsey Ogunyemi & Andrew McConnell
Beale & Co

"PI claims – a Defender's perspective"



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Lindsay Ogunyemi

Partner

Lindsay specialises in defending professional negligence claims against professionals including solicitors, architects, surveyors, accountants and IFAs.

She has specialised in this area for 20 years, during which time she has adopted an intuitive approach to resolving professional negligence claims against a wide spectrum of professionals including solicitors, brokers, accountants, architects, surveyors and construction professionals. Lindsay is described by her clients as being a "*tenacious litigator*" with "*exemplary and unrivalled*" knowledge and expertise in her field.

While Lindsay has a strong litigation background, she is a keen advocator of mediation as a forum for resolving disputes and has represented clients at a variety of mediations ranging from high value surveyor negligence claims to complicated multi-party disputes.

Lindsay is ranked by Chambers & Partners and recognised by Legal 500 as a "*Leading Individual*" in the field of Professional Indemnity.

She is also a member of the Forum of Insurance Lawyers (FOIL) for Scotland, Professional Indemnity.

BACKGROUND

ADMITTED:
Law Society of Scotland

AREAS OF EXPERTISE

- Insurance
- Professional indemnity

INDIVIDUAL AWARDS

Chambers RANKED IN UK 2026 Lindsay Ogunyemi

RECOMMENDED LAWYER Legal500 UNITED KINGDOM 2026

TESTIMONIALS

Lindsay is a highly experienced solicitor in professional negligence and is aware of the practical realities of claims, as well as the commercial considerations of litigation.
Chambers UK 2026

She is exceptionally personable, straightforward and straight-talking.
Chambers UK 2026



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Andrew McConnell

Partner

Andrew is recognised as a "*Rising Star*" in the Legal 500 and *"Up and Coming"* by Chambers in the field of professional negligence.

Andrew acts exclusively for professional indemnity insurance clients and regularly handles high value, complex claims giving succinct advice on all matters concerning liability, causation and quantum.

Andrew now specialises in the PI construction field and has acted in a significant number of construction claims representing various construction professionals such as architects, structural engineers, M&E engineers and D&B contractors. Clients have remarked that Andrew is the "go-to" solicitor in Scotland for all professional indemnity construction matters. Andrew continues to significantly expand his knowledge of the PI construction market dealing with highly complex claims including multi-jurisdictional cases together with high value coverage declinature claims.

Andrew also provides bespoke training to Insurer and broker clients covering subjects such as prescription and construction law topics in Scotland.

Clients have commented that:

"Andrew McConnell is very good, particularly in construction disputes. He quickly gets to the essence of even complex issues and delivers advice which is always sensible."

"Andrew McConnell is an excellent lawyer providing a highly capable service in all areas. He is commercial, pragmatic and efficient. He is a pleasure to work with."

BACKGROUND

ADMITTED:
Law Society of Scotland

AREAS OF EXPERTISE

- Insurance
- Professional indemnity

INDIVIDUAL AWARDS

Chambers RANKED IN UK 2026 Andrew McConnell

RECOMMENDED LAWYER Legal500 UNITED KINGDOM 2026

TESTIMONIALS

Andrew offers a lot more than just legal acumen.
Chambers UK 2026

He is very proactive and works very hard on understanding clients' needs and expectations.
Chambers UK 2026

Andrew is a very good and experienced technical lawyer who really knows the practicalities of litigation.
Chambers UK 2026

ARTICLES BY THIS AUTHOR

LEGAL AND GENERAL V HALLIDAY FRASER MUNRO – NAVIGATING PRESCRIPTION IN AN EVER-CHANGING SEA

October 2025

Andrew McConnell, Conor Kenny and Jamie Harris

IGNORANCE OF A STATE OF AFFAIRS IS NOT SUFFICIENT FOR SECTION 6(4): GGHB V MULTIPLEX & ORS

July 2025

Andrew McConnell and Victoria Hayward

IGNORANCE OF A STATE OF AFFAIRS IS NOT SUFFICIENT FOR SECTION 6(4): GGHB V MULTIPLEX & ORS

July 2025

Andrew McConnell and Victoria Hayward

PNLA
Professional Negligence
Lawyers Association

WS THE SIGNET LIBRARY

Notes: -





Neale Tosh
Axiom Advocates

"Professional Negligence & Liability Update"

Axiom



Neale Tosh

Year of Call
2020

Email
neale.tosh@axiomadvocates.com

Telephone
07754 752707

Areas of expertise

- Commercial
- Company Law
- Insolvency
- Property
- Public Law

Professional information

- Devilmasters: Chris Paterson KC, Scott Manson
- 2026: CEDR Accredited Mediator
- 2021: Appointed Standing Junior Counsel to the Advocate General for Scotland
- 2020: Called to the Bar
- 2019: Certificate of Proficiency in Insolvency (Scotland) (merit – first place)
- 2018-2019: Solicitor Advocate, DWF LLP
- 2014-2018: Solicitor, Brodies LLP
- 2007-2012 University of Aberdeen: LLB (Hons), DPLP (distinction – first place)

Professional experience

Neale handles a wide range of commercial disputes with a particular emphasis on commercial contracts, corporate, property and insolvency litigation. He is standing junior counsel to the Advocate General for Scotland. He acts mainly for HMRC in tax tribunal and insolvency litigation, the Insolvency Service in proceedings under the Company Directors Disqualification Act 1986, and the Home Office in applications for judicial review.Neale is a reporter for

Session Cases

, an Associate Member (ACIArb) of the Chartered Institute of Arbitrators, a member of the Insolvency Practitioners Association and a member of the Association of Business Recovery Professionals (R3). He has a keen interest in technology and sits on the Faculty of Advocates' AI Working Group.Neale is also a CEDR Accredited Mediator.

Notable cases

Commercial

- *Jigsaw Bidco Ltd v Allan and others* [2026] CSOH 96 (led by Roddy Dunlop KC)
- *Payment Services Provider LLC v Monitox Ltd* [2026] CSIH 7, 2026 SC 161
- *Jones v Craigton Holdings Ltd* [2024] CSOH 33
- *Thorntons Investment Holdings Ltd v Matheson* 2023 SLT 1305.
- *Thorntons Investment Holdings Ltd v Matheson* 2023 SLT 985, 2024 SC 36.
- *Parkash v The Royal Bank of Scotland plc* 2023 SCLR 449.
- *Apex Resources Ltd v Macdougall* 2021 SLT 781 (led by Paul O'Brien KC).

Insolvency

- *Parkin v Ayres Wynd Developments Ltd* 2025 SLT 1047.
- *Secretary of State for Business and Trade v Azam* 2024 SLT 614.
- *Joint Administrators of Alexander Inglis and Son Ltd, Noters* 2024 SLT 165.
- *Munchener Hypothekenbank eG, Petitioner* [2023] CSOH 36 (led by David Thomson KC).
- *Former Joint Administrators of Future Renewables ECO plc, Petitioners* [2023] CSOH 27.
- *Kingston Park House Ltd v Granton Commercial Industrial Properties Ltd* 2023 SLT 238 (led by Roddy McIlvride KC).
- *King's Trustees v King* [2020] CSOH 101 (led by David Thomson KC).

Product liability

- *Bell v Volvo Car Corp* 2025 SLT 1049.
- *Rodgers v Motonovo Finance Ltd* [2025] SAC (Civ) 11.
- *King v Black Horse Ltd* 2024 SC 296 (led by Gavin MacColl KC).
- *Deas v Park's of Hamilton (Townhead Garage) Ltd* 2022 SCLR 292.

Property

- *EE Ltd and Hutchison 3G Ltd v Verte Development Ltd* 2025 SLT (Lands Tr) 26.
- *Neos Networks Ltd v Sorrie's Trustees* [2024] LTS 34.
- *Langskaill v Black* 2023 SLT (Sh Ct) 95 (debate); 2023 SLT (SAC) 51 (appeal); [2025] SC EDIN 9 (proof).
- *Manson v Turner* 2023 UT 38.
- *Sharif v Moughal* [2023] CSOH 42.
- *Logan v Irons* 2023 SLT (SAC) 152.
- *EE Ltd v Service* LTS/ECC/2022/0006.
- *Scott v Scottish Water* [2022] SAC (Civ) 30 (led by Simon Di Rollo KC).
- *Woro v Brown* 2022 SLT (Tr) 97.

Professional liability and regulation

- *Madden v McEwan Fraser Legal [2026] SAC (Civ) 51*
- *Madden v McEwan Fraser Legal* [2025] SC EDIN 56.
- *Robertson v Hay Cassels Ltd* [2025] SC HAM 50.

Public law

- *Dunston Dunfermline Nominees Ltd v Fife Council* 2025 SLT 937 (led by David Thomson KC).
- *Heptagon Portfolio Arbroath Ltd v Angus Council* [2025] CSOH 75 (led by David Thomson KC).
- *Bridgeport Estates Ltd v Highland Council* 2025 SLT 1120 (led by David Thomson KC).
- *4U2 Ltd v Glasgow City Council* 2025 SCLR 253.
- *Quarm v HM Advocate* 2024 SLT 473.
- *Central Haulage Ltd v Traffic Commissioner* [2024] UKUT 22 (AAC).

Trusts and Tax

- *Aesthetic-Doctor.com Ltd v HMRC* [2024] UKFTT 48 (TC).
- *Niven v Niven* [2023] CSOH 57.
- *W v W* 2022 SLT (Sh Ct) 64.
- *Brownrigg's Executor* 2021 SLT 1145.

Directories

Chambers UK – Commercial Dispute Resolution (Up and coming)

Select publications

Axiom

Professional negligence & liability update

Neale Tosh

29 October 2026

1

Axiom

Outline

- *Manchester Building Society v Grant Thornton UK LLP* [2021] UKSC 20, [2022] AC 783 at [6]

- Q2 & Q5: Scope of duty / duty nexus
- Q3: Breach of duty
- Q4: Factual causation

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2

Axiom

Scope of duty / duty nexus

- *Afan Valley Ltd v Lupton Fawcett LLP* [2026] EWCA Civ 2, [2026] PNLR 12

- *PBF Investments Ltd v Ewan & Co LLP* [2026] EWHC 1008 (Ch), [2026] PNLR 22

- *Lamb v Bennett* [2026] CSOH 16

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Scope of duty / duty nexus

- *Eiger Funding (PCC) Ltd v Ridge and Partners LLP* [2026] EWHC 609 (TCC)
- *Niprose Investments Ltd v Vincents Solicitors Ltd* [2026] EWHC 2320 (Ch)

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Breach of duty

- *Powis Street Estates (No 3) Ltd v Winston & Strawn London LLP* [2025] EWHC 2974 (Ch), [2026] PNLR 10
- *Fassone v Hugh James* [2026] EWHC 364 (KB)

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Factual causation

- *Blower v GH Canfield LLP* [2025] EWCA Civ 1627, [2026] PNLR 16
- *Gordeno v Irwin Mitchell LLP* [2026] EWHC 136 (Ch)
- *Siem v Womble Bond Dickinson (UK) LLP* [2026] EWHC 1168 (Ch)

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Professional negligence & liability update

Neale Tosh

29 October 2026





Matthew Pascall
Temple Legal Protection

"The Daily Mail Phone Hacking Trial & ATE – What Happens when it all goes wrong"

temple
legal protection



Matthew Pascall

Legal Director
Head of Commercial

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

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

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

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

E: matthew.pascall@temple-legal.co.uk T:01483 514428

Temple
LEGAL PROTECTION

The Daily Mail Phone Hacking Trial

What Happens When it All Goes Wrong



Matthew Pascall
Legal Director & Head of Commercial

1

Apologies

Temple
LEGAL PROTECTION

Far too English

Nothing to do with Prof Neg!



2

The Cases – A Snapshot

Temple
LEGAL PROTECTION

Who's Who?





3

The Cases – A Snapshot

Temple LEGAL PROTECTION

01 Unlawful Information Gathering

02 Private Information

03 Knowingly obtaining or using unlawfully gathered private information

04 C v Chief Constable of the Police Service of Scotland [2019] CSOH 48



Underwriting the Cases

Temple LEGAL PROTECTION

Key Moments

- Brief background
- What cover is provided by ATE Insurance
- Staged Increases in Cover
- Initial level of cover provided.

1 › 2 › 3 › 4

Underwriting the Cases

Temple LEGAL PROTECTION



Key Moments

- Strike Out Application
- Managing Judge
- Failure of strike out
- Pleadings

Underwriting the Cases

Temple LEGAL PROTECTION

Key Moments

01 Costs Budgets

02 CCMH

03 Amounts Allowed



Underwriting the Cases

Temple LEGAL PROTECTION

Key Moments

- Narrowing the issues
- Claimants' Broad generic Case
- Relevance of evidence of propensity



Underwriting the Cases

Temple LEGAL PROTECTION

Key Moments

- Increasing Cover
- Limited Material
- Commitment Point
- Intention to further review in the autumn after exchange of witness statements

Underwriting the Cases

Temple LEGAL PROTECTION

Key Moments

01 Final Review of the Case – October '25 through to January '26

02 High level review

03 What we looked for?

04 Final amount of aggregate cover - £16.2m

?

10

The Trial

Temple LEGAL PROTECTION

Key Issues

- "The question was, having regard to the explanation for the sources of the private information advanced by ANL, whether the claimant had proved that the Defendant had knowingly used unlawfully gathered private information."
- Limitation – Section 32 (1) (b) Limitation Act 1980.



11

Judgment & Initial Response

Temple LEGAL PROTECTION

- Coverage
- Basis of Costs
- Payment on account of costs
- ANL says its costs were £38.4m


Daily Mail SPECIAL HISTORIC EDITION

VINDICATED

In a 46-day High Court case costing over £50m, seven claimants including Prince Harry, Baroness Lawrence and Elton John accused the Mail of 57 counts of illegal information gathering. Over 40 of our journalists defended themselves in the witness box. And yesterday, in a landmark ruling, one of Britain's top judges rejected EVERY SINGLE allegation

INCOMPARABLE REPORTS AND ANALYSIS

12

Indemnity or Standard Costs

Temple LEGAL PROTECTION

Indemnity Costs

=

Expenses on the agent and client, client paying basis or agent and client, third party paying basis.

When Appropriate?

Effects of an order for indemnity costs

13

Final Thoughts & Questions

Temple LEGAL PROTECTION

Lessons to Learn?

Regrets?

Further Reading:

Judgment reported at: [2026] EWHC 1637 (KB)
See paragraphs 124 to 137 & 570 to 620.



14

Questions?

Temple LEGAL PROTECTION



15

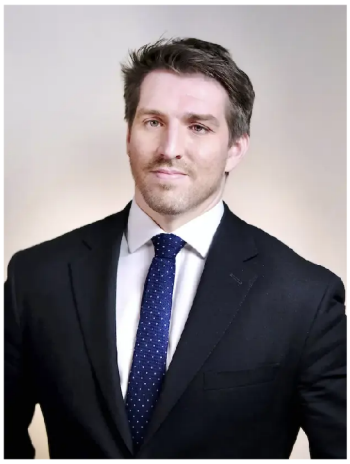




Graeme Milloy
1 Six Chambers

"Accounting/audit negligence litigation, damages and quantification"

Graeme Milloy



Graeme specialises in commercial, insurance and professional negligence disputes. His other areas of practice are clinical negligence, property litigation and public law.

Year of call (Scotland)

2025

0131 260 5770

g.milloy@1six.com

Professional experience

Graeme has a growing practice focused on commercial disputes and professional and clinical liability.

As a solicitor, Graeme practiced within the professional negligence teams at Clyde & Co and Burness Paull. He has extensive experience pursuing and defending professional negligence claims involving accountants, architects, auditors, engineers and surveyors. He particularly specialises in disputes involving lawyers and has dealt with a wide range of such cases, including claims arising from agricultural, corporate, property, succession, tax and trusts matters. He has also acted for construction professionals in several high value infrastructure disputes and advises insurers and insureds regarding coverage issues.

Graeme has experience of litigating in the Commercial Court, the Outer and Inner Houses of the Court of Session and the Sheriff Courts, regularly conducting proofs, debates and other substantive hearings. He is well regarded for his commercial and strategic approach to resolving disputes.

While devilling, Graeme gained further exposure to a wide variety of commercial, insolvency, insurance and property disputes. Additionally, he developed his long-standing interests in clinical negligence, having undertaken a period studying medicine prior to his legal studies, and public law. His clinical practice spans a wide variety of complex medical issues.

Graeme called to the Bar as a Lord Hope Scholar.

Areas of expertise

- Administrative and Public Law
- Alternative Dispute Resolution
- Clinical Liability
- Commercial
- Construction
- Professional Liability

Professional information

- 2026 - present: Member of the Faculty Law Reform Committee
- 2025: Called to the Bar (Devilmasters: Adam McKinlay, Jennifer Nicholson-White, Scott Manson, Duncan McPhie)
- 2024: Solicitor, Clyde and Co
- 2019 - 2024: Solicitor, Clyde and Co
- 2017 - 2019: Trainee Solicitor, Holmes Mackillop
- 2016: Diploma in Professional Legal Practice, University of Glasgow
- 2015: LLB (Hons), University of Edinburgh

Notable cases

Professional liability

Cockburn v Cockburn's Judicial Factor (Court of Session) – Junior counsel for the defender. Negligence action against a judicial factor.

Mackie Motors (Brechin) Limited and Others v Henderson Loggie LLP (Court of Session) – Acting for the pursuers in a multi-million pound accounting and audit negligence claim.

Barrie and Lorraine Henderson v Staran Architects Limited and Others (Court of Session) – Acting for the pursuers in a seven-figure construction dispute.

Acting for the pursuers in ongoing litigations (Sheriff Court) against solicitors arising from under-settlement of personal injury actions and missed time bars.

As a solicitor, Graeme acted for professional indemnity insurers and their insureds in some of Scotland's most complex professional negligence claims against solicitors and counsel. He was also involved in high profile infrastructure disputes, such as acting for the engineer defenders in Highlands and Islands Enterprise v Galliford Try Infrastructure Limited and Others [2023] SLT 1077.

Clinical liability

Ongoing actions in the Court of Session involving complex fatalities (in each case led by Isla Davie KC) and involving, amongst other things, delayed diagnosis of ovarian cancer and failure to treat sepsis in a child.

Multiple ongoing complex cases in the Court of Session and All Scotland Personal Injury Court (as sole counsel) involving various Health Boards, GP surgeries and the Scottish Ambulance Service and concerning birth injury, surgical error, incorrect and missed diagnoses, and delayed response.

Commercial

Petition of Arbitration Appeal No 2 of 2024 [2025] CSOH 70 (Court of Session) - Counsel for the petitioners. Arbitration appeal on serious irregularity grounds arising from a farming partnership dispute.

Petition of Performance Finance Limited (Court of Session) – Acting for the petitioning lender to obtain provisional and protective measures under s.27 of the Civil Jurisdiction and Judgments Act 1982.

Petition of Glen Cook for suspension and declarator (Court of Session) – Junior counsel for the petitioner (led by Jonathan Barne KC). Proceedings against HMRC to prevent enforcement action over a significant tax liability where the petitioner was legally unable to make payment.

Property

Elliot & Others v McCandlish [2025] SC KIL 92 (Sheriff Court) - Counsel for the defender. Debate regarding title and interest and the right to recover purely economic losses in the context of a nuisance claim.

A&G Rentals v JMProperties Glasgow Limited (Court of Session) – Acting for the pursuers. Claim concerning fire damage to commercial premises arising from unauthorised subletting.

15x Chambers

Accounting and Audit Negligence; Damages and Quantification

Lessons from
The Wine Enterprise Investment Scheme Limited v Crowe U.K. LLP

Graeme Milloy,
Advocate

1

15x Chambers

Why does this case matter?

1. A rarity – a substantive judgment in relation to an audit negligence claim.
2. A good read, despite being 269 pages!
3. Detailed analysis of the interplay between timing of breaches, factual causation, 'loss of chance' and quantification.

2

The facts

- Marketed as an opportunity to invest in wine while benefiting from Enterprise Investment Scheme tax relief.
- Between 2012 and 2016, company raised over £4.5 million through issuing shares.
- Company's liquidators subsequently discovered company held only £6.50 in its bank account.
- Its directors, Birrell and della Casa, acted dishonestly and operated the business as a Ponzi-style scheme.
- Crowe had audited the company consecutively from 2012 to 2018, but failed to identify, investigate and flag various signs of fraud.



3

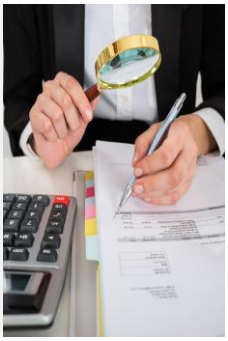
Or, as Mr Spearman KC put it:

"This claim arises out of the relatively short and ultimately unhappy existence of The Wine Enterprise Investment Scheme Limited ("the Company" or "TWEISL"). The business of the Company was marketed to investors as providing them with an opportunity to invest in wine while also obtaining Enterprise Investment Scheme ("EIS") tax relief on their investments. Edward FitzGerald's translation of the Rubaiyat of Omar Khayyam speaks of ending up "sans wine" and "sans song". The investors are already without wine. If this claim fails, they will also have little reason for song."

4

The alleged breaches

1. Failure to exercise professional scepticism.
2. Failure to investigate purported deposits with Lilliput (an offshore entity and related party).
3. Misclassification of Lilliput deposits and failures of disclosure.
4. Failure to investigate other related-party transactions.
5. Inadequate fraud risk identification.
6. Failure to qualify or disclaim the audit opinions.
7. Breach of duty to warn – but who to warn?



5

Who to warn?

- Both directors were party to the fraud.
- Crowe thus contended discharging any duty to warn would lead to the same ultimate result.
- Echoes of Lady Hale's observations in *Singularis Holdings Ltd v Daiwa Capital Markets Europe Ltd* [2020] AC 1189.
- Who else could have taken different actions, if warned? Only the shareholders.



6

Singularis Holdings per Lady Hale at [36]:

"The auditor's duty is to report on the company's accounts to those having a proprietary interest in the company or concerned with its management and control. If the company already knows the true position (as in *Berg Sons & Co Ltd v Adams* [1993] BCLC 1045) then the auditor's negligence does not cause the loss"

7

The company's case on loss

- Claims advanced in respect of each of seven successive audits, proceeding on the hypothesis the company would have entered liquidation sooner had Crowe satisfied its duties.
- The company accepted that if its claim relative to the 2016 audit year failed then it could not succeed at all.
- The company broadly advanced four heads of loss:
    1. Loss of preservable assets;
    2. Subsequent losses from continuing to trade;
    3. Additional liquidation and legal costs;
    4. Interest.

8

The company's case on loss (2)

- Largest head loss was loss of wine stocks valued at circa £4.375 million in relation to the 2016 audit year claim.
- However, the company argued for successive, rather than alternative, cases on loss.
- Also sought was the loss of shareholder funds – circa £2.235 million – lost over successive audit years.
- But the company's own counterfactual was that it would have ceased trading sooner, once the problems were exposed, whenever that happened.

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The judgment on loss

- The court identified a clear risk of double counting in each subsequent audit year. Also, not every later loss was automatically attributable to an earlier breach.
- The subsequent losses were not made out because by continuing to trade, the company gained the benefit of additional subscription funds it otherwise would not have received. Crowe's "credit for benefits" argument was well founded.
- Loss of wine stocks should be quantified with reference to the breaches during the 2016 audit year. The stocks were found, in fact, to have started declining in value that year. Previous years' losses were "subsumed" into that year.
- Held the company had lost the chance to preserve and recover wine stocks totalling £4,464,749 due to breaches in FY 2016. The value of that chance was assessed as only £285,000 (per [767]).

10

The judgment on loss (2)

- Held insufficient evidence to support damages for lost chance to recover missing cash. While a reasonable general proposition — that earlier detection may improve recovery prospects — no evidence showing a particular sum would have been recovered.
- The same issue arose regarding Crowe's approach to quantifying losses from the wine stocks. Its proposed discounts, reflecting uncertainty over ownership, were not the subject of proper pleading or reflected in the evidence.
- On liquidation costs, held these must be calculated with reference to the 2016 audit year claim. Observed that doing otherwise would:

  "give the Company the best of both worlds: a substantive award calibrated by reference what would have been recoverable when there were plenty of assets around, and a costs of recovery award calibrated by reference to when there were not."

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Contributory negligence

- Crowe argued, and the court accepted, that any award must be reduced due to the company's contributory fault.
- Applied *Barings PLC (In liquidation) v Coopers & Lybrand (A Firm)* [2003] PNLR 34, *Singularis* and *AssetCo v Grant Thornton UK LLP* [2020] EWCA Civ 1151

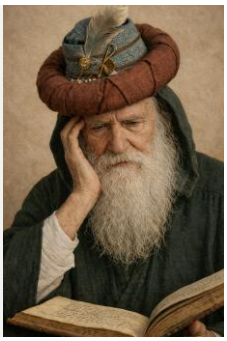
  "there is a powerful argument than where a company is set up without corporate governance and internal controls that are separate from the dominance of its directors, both of whom are dishonest, that cannot place the company in a better position for purposes of assessing the company's contributory fault than if it had been set up with independent corporate governance and management controls which failed …" **per the court's judgment at [902]**

12

The final award

- Against a claim presented at a highest principal value of £8,423,962 and a lowest value of £3,352,635...

£101,965.95 awarded plus interest at 3% above base rate from 1 December 2019 to 27 March 2026



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1Six Chambers

Lessons from the case

Key takeaways for accounting and audit claims

Causation

- Ensure counterfactuals are not mutually contradictory.
- Distinction between date of breach, date of causal impact, and date on which assets were lost.
- Focus on the practical effect of counterfactual actions.

Quantifying loss

- Hypothetical chance of recovery does not sound in damages without evidence.
- Guard against double recovery.
- Valuation of assets must consider realisable value and extent to which they could be preserved.
- Interest – date of actual loss, not earliest alleged breach.

Big picture

- Courts will use a broad brush but cannot speculate.
- Counterfactuals should be fully explored at an early stage in proceedings.
- Cannot 'eat cake and have it'.
- Causation remains a key battleground.

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1Six Chambers

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Tim Edward & Ashley Jones

& Katy Manley
PNLA President & BPE Solicitors LLP

"Short panel session (Thoughts/hot topics in prof neg) followed by Final Q&A and closing remarks"



PNLA Professional Negligence Lawyers Association

bpe SOLICITORS

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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With thanks to all our speakers

Please complete your feedback form please go to:

https://www.pnla.org.uk/event/professional-negligence-liability-scotland-pnla-ws-society-edinburgh-29-october-2026/

Edinburgh 29 October 2026

Discussion session – Privilege

Open source artificial intelligence loss of privilege

UK and R (on the application of Munir) v Secretary of State for the Home Department (AI hallucinations; supervision; Hamid) *UT Neutral Citation Number: [2026] UKUT 00081 (IAC)*

Upper Tribunal Judges Lindsley; Keith; Blundell

21. We also observe that to put client letters and decision letters from the Home Office into an open source AI tool, such as ChatGPT, is to place this information on the internet in the public domain, and thus to breach client confidentiality and waive legal privilege, and thus any regulated legal professional or firm that does so would, in addition to needing to bring this to the attention of their regulator, be advised to consult with the Information Commissioner's Office. Closed source AI tools which do not place information in the public domain, such as Microsoft Copilot, are available for tasks such as summarising without these risks.

Regulator cannot obtain privileged documents

Carter-Ruck Solicitors & Anor v Solicitors Regulation Authority [2026] EWHC 2416 (KB) (21 September 2026) Mr Justice Butcher
URL: *https://www.bailii.org/ew/cases/EWHC/KB/2026/2416.html*

> 155. I have thus concluded that s. 44B [Solicitors Act 1974] does not permit the SRA to require the production of documents subject to the client's unwaived LPP [legal professional privilege]. At best, from the SRA's point of view, its terms might be said to be equivocal. That is not enough to override the fundamental right of LPP. It is not 'compellingly clear' that there is an override of LPP implied into s. 44B. The SRA has not surmounted the 'high threshold' for a necessary implication. There is no authority which binds this court to reach the conclusion that there is such an implication. But this court is bound to find that there is no 'non-infringement' or permissible infringement exception to LPP in the case of documents required by a legal regulator.

No litigation privilege in documents sent to ATE insurers

Uber London Ltd & Ors v White & Ors (Re Disclosure) [2026] EWHC 1610 (Comm) (12 June 2026)
URL: *https://www.bailii.org/ew/cases/EWHC/Comm/2026/1610.html*

58. The view that I have come to in relation to litigation privilege is consistent with the conclusion of Aikens J in the *Winterthur* case, in relation to what was referred to in his judgment as the "pre-ATE policy documents". These were documents created such that potential personal injury claims could be assessed for viability under a "no win, no fee" scheme, which involved the issuing of an ATE policy.

    These documents included application forms, which set out preliminary details of a claimant's potential claim, and questionnaires, which set out further details of the accident circumstances and the losses claimed.

    The claimant there contended that the documents came into being for the purpose and benefit of the insurer, in order to decide whether the insurer would issue an ATE policy in respect of any particular claim.

    The defendants said that the dominant purpose for which these documents were created was, objectively speaking, that of conducting litigation, which was reasonably in the prospect at the time they were created.

    It was argued (as set out at paragraph 86 of the judgment) that "there was a "unified" purpose in completing these pre-ATE Policy documents, because the process of obtaining the ATE Policy was an intrinsic part of the litigation process" and that the "whole process, considered objectively, is in aid of litigation".

59. Aikens J accepted that, at the time the communications were created, litigation was in contemplation. However, he rejected the submission that the dominant purpose test was met, and he explained that at paragraph 91 (omitting footnote references):

    > "91. That leads on to the next question: whether the pre-ATE Policy documents identified in the Panel Solicitors' schedule were

created for the dominant purpose of obtaining legal advice in respect of that contemplated litigation.

For this I have to ask: why did enquiries have to be made as to the circumstances giving rise to the potential claims? Was the dominant purpose one which would lead to a decision on whether or not to litigate the claim?

This is a more difficult issue. In the end I have concluded that, at the time that these documents were created, the dominant purpose was to make a decision on whether the ATE Policy would be issued and the potential claim funded.

If the policy was not issued, then there would be no litigation.

I appreciate that there are indications in the documents (to which Miss Carr drew my attention) which suggest that there will be litigation. But that was not guaranteed until the ATE Policy had been issued.

I accept that a subsidiary reason for producing the documents was the potential litigation, but it was not what was uppermost in the minds of NIG and TAG at the point they were created."

60. Whilst the question of what the dominant purpose was is a question specific to the facts of each case in which it arises, the points with which Aikens J dealt are not dissimilar to the arguments here. These were documents that dealt with the content of the claims – they were not, for example, documents simply recording the terms of funding or the terms of ATE cover – and Aikens J accepted that the potential litigation was a subsidiary reason for producing the documents, but that was not sufficient. Moreover, he did not accept the defendants' argument that there was a "unified" purpose that encompassed obtaining the ATE as an intrinsic part of the litigation process. This is consistent with, and supports, the view that the funder's decision whether or not to fund the litigation is not, itself, conduct of the litigation.

61. Accordingly, I find that on the evidence put before the Court as to the purpose for which the Harbour Communications were created, that they do not attract litigation privilege.