





PROFESSIONAL NEGLIGENCE AND LIABILITY UPDATE

BRISTOL CONFERENCE

Thursday, 19th November 2026

PROFESSIONAL NEGLIGENCE LAWYERS ASSOCIATION

BRISTOL CONFERENCE hosted by Burges Salmon

19th November 2026

0830–0900	Registration and Refreshments
0900–0905	*"Introduction*" **Andrew Burnette – Burges Salmon**
0905–0925	*Chairman's Address: "Duties: clients, others, the profession and regulators"* **Nicholas Davidson KC – Guildhall Chambers**
0925–1005	*"Insured" Claims? Traps for the Unwary"* **Dan Stacey – Hailsham Chambers**
1005–1020	Refreshments
1020–1100	*"Limitation: the age-old question; recent cases on s14A and s32 LA 1980"* **James Hall – Gatehouse Chambers**
1100–1135	*"The Defendant Perspective"* **Helen Ager – Kennedys**
1135–1210	*"10 Things I Hate About You"* **Andrew Burnette – Burges Salmon**
1210–1245	*"Litigation funding"* **Jamie Molloy – Ignite Specialty Risk**
1245–1300	*Questions and discussion*
1300–1400	Lunch
1400–1435	*"The Forensic Architects Perspective"* **Sam Morley RIBA – Hawkins**
1435–1510	"*What's New in Negligence? - A Professional Negligence Update"* **Nicole Hilton – St Johns Chambers**
1510–1545	*"Costs Update"* **Nicholas Lee, Managing Director – Paragon Costs Solutions**
1545–1600	Refreshments
1600–1635	*"When could a professional be negligent for using or not using AI?"* **Tom Whittaker & Amy Khodabandehloo – Burges Salmon**
1635–1645	*Chairman's closing remarks, questions and discussion session*

PROFESSIONAL NEGLIGENCE AND LIABILITY
BRISTOL CONFERENCE
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ATTENDEES (1 of 3)

Nicholas Davidson KC - Chair	**Guildhall Chambers**	**Bristol/London**
Helen Ager	**Kennedys**	**Taunton**
Kayleigh Amott	**ARAG Law**	**Bristol**
Martin Bailey	**DLG Legal Services**	**Norwich**
Daniel Bojko	**New South Law**	**Littlehampton**
Caroline Brown	**Burges Salmon**	**Bristol**
Zoe Burge	**CMS Cameron McKenna Nabarro Olswang**	**Bristol**
Andrew Burnette	**Burges Salmon**	**Bristol**
John Carter	**BPE Solicitors**	**Cheltenham**
Tadge Channer	**ARAG Law**	**Bristol**
Amy Clarke	**ARAG Law**	**Bristol**
Roanna Cooling	**Hughes Paddison Solicitors**	**Cheltenham**
Martin Cox	**Tyr Law**	**Bristol**
Charlotte Dawes	**Capital Law**	**London**
Nicky Doble	**Independent Mediators**	**Bedfordshire**
Adam Finch	**HCR Legal**	**Cheltenham**
Rina Gokani Thomas	**ARAG Law**	**Bristol**
Richard Gore	**Impetus Legal**	**Bristol**
John Grace	**Mogers Drewett**	**Wells**
David Gregory	**Charles Russell Speechlys**	**Surrey**
David Haines	**Charles Russell Speechlys**	**Surrey**
James Hall	**Gatehouse Chambers**	**London**
Horaine Henry	**Lamb Building**	**London**
Stuart Henry	**Barcan Kirby Solicitors**	**Bristol**
Nicole Hilton	**St Johns Chambers**	**Bristol**

Simon Hobbs	**Freeths**	**Bristol**
Simon Howarth KC	**Hailsham Chambers**	**London**
Rachel Hucker	**Burges Salmon**	**Bristol**
David Hulbert	**ARAG Law**	**Bristol**
Bartlomiej Karpisz	**New South Law**	**Littlehampton**
Amy Khodabandehloo	**Burges Salmon**	**Bristol**
Darren Kidd	**Tyr Law**	**Bristol**
Nicholas Lee	**Paragon Costs**	**Bristol**
Toni Lewis	**Capital Law**	**London**
Joanna Lingard	**Hughes Paddison Solicitors**	**Cheltenham**
Kendal Litherland	**Rothera Bray**	**Notthingham**
Andy Lyalle	**Temple Legal Protection**	**Guildford**
Katy Manley	**PNLA President & BPE Solicitors**	**Cheltenham**
Caroline Marley	**BRG**	**London**
Sarah McCann KC	**Gatehouse Chambers**	**London**
Gemma Mittell	**Stephens Scown LLP**	**Exeter**
Jamie Molloy	**Ignite Specialty Risk**	**London**
Sam Morley	**Hawkins - Forensic Architect**	**Reigate**
Alice Nash	**Hailsham Chambers**	**London**
Laura Nelson	**Croft Solicitors**	**Cheltenham**
Sian O'Neill	**Everys Solicitors**	**Honiton**
David Osborne	**Fraser Dawbarns**	**Norfolk**
David Patterson	**Goughs Solicitors**	**Chippenham**
Jenny Raymond	**HCR Legal**	**Cheltenham**
Helen Read	**Bristol Law Society**	**Bristol**

Victoria Russell	**ARAG Law**	**Bristol**
Zoe Saunders	**St John's Chambers**	**Bristol**
Dan Stacey	**Hailsham Chambers**	**London**
Alicia Tew	**Hailsham Chambers**	**London**
Layla Todd	**CMS Cameron McKenna Nabarro Olswang**	**Bristol**
Kathy Trist	**Everys Solicitors**	**Honiton**
Tom Watkins	**Temple Legal Protection**	**Guildford**
Kelly Whittaker	**Freeths**	**Bristol**
Tom Whittaker	**Burges Salmon**	**London**
Charlotte Wight	**Hugh James**	**Cardiff**

PNLA
Professional Negligence Lawyers Association

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Andrew Burnette
Burges Salmon

"Introduction"

Andrew Burnette

Partner

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Andrew heads the firm's Dispute Resolution department. He is a highly experienced commercial litigator with top-band ranking in the leading independent directories. Legal 500, 2025 says "He is a highly intelligent, focused and commercially-minded partner, who seeks to provide an excellent service to clients. He knows everything there is to know about professional negligence claims, and commercial litigation generally."

He specialises in high value, complex or portfolios of professional negligence claims, particularly against solicitors, surveyors/valuers, financial advisors and brokers, actuaries, auditors and accountants. He is particularly well-known for his work on behalf of traditional and specialist lenders in this field. His team is "an extremely formidable force on the claimant-side of professional negligence claims…providing city law firm quality out of London" (Legal 500, 2025).

Andrew is a regular speaker and commentator on professional negligence matters, with a keen interest in how liability for the deployment of AI and technology in professional services will evolve.

His practice also includes civil fraud, company and shareholder disputes, contractual disputes across a wide variety of subjects and sectors, urgent injunctive relief to protect his clients' commercial interests, and product liability.
Andrew is a member of the Professional Negligence Lawyers' Association and the International Bar Association.

Experience

- Surveyor negligence: Acting for a specialist lender regarding the negligent over-valuation of a shopping centre as security for a £17.75 million loan.
- Solicitor negligence: Advising a national retailer on claims against an international law firm arising from disclosure failings.
- Financial adviser: Defending a financial adviser against claims of fraudulent misrepresentation, conspiracy and COBS breaches by former clients.
- URE Energy: Successful Commercial Court proceedings against Notting Hill Genesis following the termination of a novel energy supply arrangement.





Nicholas Davidson KC
Guildhall Chambers

Chairman's Address:
"Duties: clients, others, the profession and regulators"

Guildhall CHAMBERS

NICHOLAS DAVIDSON KC

Call 1974 | Silk 1993

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Nicholas Davidson KC is an experienced barrister in Commercial practices and Professional Liability.

Nicholas joined Guildhall as a Door Tenant in June 2022, he is a CEDR-accredited mediator.

Expertise

Lawyers Liability

Nicholas has decades of experience of claims against lawyers, both on the claimants' side and on the defendants' side, and this has taken him around the full spectrum of the law and to the highest Courts (e.g. AIB v Mark Redler & Co in the Supreme Court).

In recent years he has been involved in claims relating to problems over executive bonus arrangements, senior employee exit payments, Stamp Duty Land Tax, the administration of a potentially insolvent Estate, the flotation on AIM of an overseas business, loss of an option to acquire a freehold interest, and criticisms of the way in which lawyers have conducted litigation and arbitration. A frequent issue in this area of law is Limitation.

Financial Practitioners Liability

Nicholas also has decades of experience of such claims. This included the remarkable and successful claim by Harlequin Property against accountants Wilkins Kennedy. He is particularly interested in claims against investment professionals (in which predominantly he has acted for claimants rather than defendants), not least the extent to which risks are accurately identified and explained to clients and investments made in line with client expectation. More than 20 years' experience as a D.B. pension trustee reflects his interest in the subject.

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Insurance, Corporate Governance & General Common Law

Nicholas has particular experience of issues as to professional indemnity insurance (including experience as an arbitrator), but also other general experience of insurance matters. He has been concerned with matters of corporate governance at the highest level (the executive bonus arrangements at Newcastle International Airport; a top-level governance fracture at one of Europe's largest private companies; the governance of the National Union of Mineworkers, for whom he acted against its former President, Mr Arthur Scargill). There is a wide overlap between his lawyers' liability practice and general commercial, contract-based work.

Appointments

- Deputy High Court Judge (until 2021)
- Directions Judge, Bar Tribunals and Adjudication Service
- Pension Trustee, Inner Temple Defined Benefit Scheme

Education

- Cambridge University (Economics Part I, Law Part II)

Memberships

- Bar European Group
- British Insurance Law Association
- Chancery Bar Association
- Commercial Bar Association
- Financial Services Law Association
- Professional Negligence Bar Association (past Chairman)
- Society for Computers and Law

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PNLA Keynote

Nicholas Davidson KC

November 2026

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1

In the end, the profession will get the regulation it deserves if it does not do its own thinking, but it cannot really complain if external forces do it instead. [Guy Beringer]

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2

- Lady Justice Whipple
- Mr Justice Waksman
- Mrs Justice Bacon
- Barristers and Solicitors
- 23 November

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3

The intention is that adherence to, and respect for, the content and philosophy of the paper should improve the experience for all Counsel acting in hard fought and high stakes cases in the BPD.

4

COMBAR, TECBAR and the Chancery Bar Association believe that adherence to these Principles is consistent with and complementary to our members' ***promotion of the best interests of their clients*** *in accordance with their professional duties*.

5

- Courtesy;
- Respect;
- Appropriate and respectful treatment regardless of seniority, background or personal characteristics (going beyond compliance with the Equality Act 2010 and relevant provisions of BSB Code of Conduct which is required of all barristers); …

6

- …
- Consideration of personal wellbeing;
- Thoughtfulness in relation to known personal, family, religious and any other individual circumstances or commitments; and
- Avoidance of, and active challenge to, any form of bullying or harassment.

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7

As to dealing with opponents …

- Observance of the Overarching Principles above;
- Avoidance of belittling, dismissive, or unequal treatment of opponents, particularly more junior opponents, both in and out of hearings; …

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8

As to dealing with opponents …

- …
- Avoidance of language, whether during hearings, in written submissions or correspondence, or in other professional settings, that is inflammatory, offensive, or directed at the personal attributes or professional standing of opponents rather than at their arguments; …

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9

As to dealing with opponents …

- …
- Avoidance of conduct outside hearings that seeks to intimidate or undermine opponents through personal pressure or misuse of seniority or status. This is not intended to preclude firm, critical or forthright professional exchanges, but to discourage behaviour that crosses the line into personal intimidation;
- Avoidance of unmerited threats of professional complaints, wasted costs applications or other personal attacks, during hearings or by way of correspondence; …

10

As to dealing with opponents …

- …
- Active consideration of known personal, family, religious, or other individual needs or commitments of opponents, especially for listing and timetabling purposes (insofar as consistent with the needs of the case); and
- Not seeking to take a perceived tactical advantage with respect to the likely personal commitments of opponents when timing hearings, applications or correspondence or in respect of other timetabling matters.

11

One's own team …

- It's not only about opponents.
- Similar principles are set out about dealings inside one's own team.

12

- Sir Peter Coulson
- *The Practice of Judging*

- "My wife [a circuit judge] would say that counsel can sometimes be abominably rude. Grand counsel appearing for privately paid clients in a Crown Court can often really not be professional at all." They could sometimes believe their own hype, he suggested.
- Sir Peter Coulson, interviewed for *Legal futures* (13/11/26)

The legal profession has "tried effectively to outsource its soul to its regulators" by substituting acting ethically with the absence of illegality … [Guy Beringer]

"And if you take the issue simply of maintaining the public confidence in the legal profession and in the justice system, you might ask when was the last time this appeared on the agenda of any commercial law firm? And you probably won't get an answer."

- Guy Beringer (former senior partner of Allen & Overy)
- Speaking in September 2026 at the
- International Conference of Legal Regulators

- The Denning Lecture 2026
- 24 November

Jointly hosted by BACFI and the Employed Bar Forum

'Navigating the Ethical Dilemmas of the Employed Barrister - what can the public and private sectors learn from each other?'

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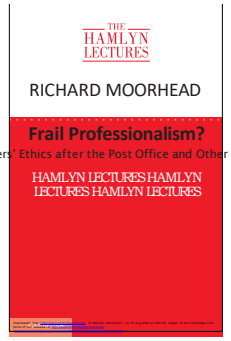

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Notes: -





Dan Stacey
Hailsham Chambers

"Insured" Claims? Traps for the Unwary"

hailshamchambers

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Dan Stacey

Call: 1996



Overview

Dan Stacey is a senior junior barrister who specialises in professional indemnity and costs litigation. He has been rated in the main directories for many years for both professional negligence and costs and he has appeared in numerous reported cases in the High Court, Court of Appeal and Supreme Court (*including Page v Hewetts and Grondona v Stoffel*). He was shortlisted as Professional Negligence Junior of the Year 2022.

"Dan is excellent at costs and professional negligence. Dan is straightforward, helpful and a pleasure to work with." *Legal 500, 2026*

"Dan is always very well-prepared and has an excellent ability to build a good rapport with clients. In court, his advocacy skills are something to behold, calmness personified but with a ruthless streak to ensure that a client's case has the best possible chance of success." *Legal 500, 2026*

"Dan is a very experienced and knowledgeable barrister. He has an ability to get through to the heart of a case effortlessly while also being very personable and approachable." *Chambers UK, 2025*

"Dan offers a wealth of knowledge. He provides insightful and pragmatic advice while also taking the client’s wider objectives into account. His bedside manner with clients is second to none." *Legal 500, 2025*

"His grasp of the issues of a case is exceptional, and any advice is provided with a keen commercial understanding of the bigger picture." *Chambers UK, 2025*

"Dan provides excellent client care by clearly advising on complex issues while taking into account personal sensitivities and circumstances." *Chambers UK, 2025*

"Dan Stacey is very experienced and a fine tactician, who always thinks deeply about how to resolve matters." *Chambers UK, 2025*

"Dan is a cool, calm and collected barrister. He is very astute, thoroughly prepared and tenacious when he has to be. His bedside manner with clients is wonderful." *Legal 500, 2024*

"When it comes to clients, Dan really understands their needs. When it comes to judges, he knows just how to engage them." *Chambers UK, 2024*

He is a co-editor of the latest (4th) 2019 edition of Friston on Costs and edited the Security for Costs chapter.

He is often brought into substantial cases as a costs junior. He also frequently advises and acts on appeals from first instance decisions.

He also provides advice and advocacy in areas related to his main areas of practice, including insurance and banking disputes, and regulatory and SDT matters.

Professional liability

Dan is regularly recommended in Legal 500 (currently Band 2) and Chambers & Partners (Band 3) for professional negligence. He was shortlisted as Professional Negligence Junior of the Year 2022 (Legal 500).

He has acted in solicitors' negligence claims for and against a number of the top 100 law firms.

He advises and acts regularly in all kinds of High Court professional negligence actions (solicitors, barristers, accountants, insurance brokers, auditors etc). Recent examples include:

- claims against solicitors and barristers arising out of negligent drafting of commercial and banking documentation (share sale agreements, guarantees, breaches of warranty clauses etc.)
- claims relating to arguments as to the fiduciary duties of solicitors in respect of retainers and their funding (post-Belsner).
- claims relating to inadequate advice at the outset of the retainer as to costs involved and to the merits of the claim.
- claims against accountants and auditors (frequently in cases where complex limitation and causation defences are raised).
- claims against insurance brokers, typically where it is alleged that they have failed to obtain proper insurance or claim promptly against the insurer raising issues of breach, causation and loss, and expert evidence. Fire and flood perils, theft and fraud.
- claims against IFAs typically for negligent recommendations of unsuitable financial products.
- illegality defences (Grondona v Stoffell & Co)
- limitation issues (Counsel in the important cases of Page v Hewetts and Mortgage Express v Abensons)
- loss of litigation claims (inc. limitation and issues of applicability of foreign law)

- ground rent, buy to let and cavity wall claims.
- buyer funded developments.
- defending numerous claims and wasted costs applications for the Bar Mutual Indemnity Fund.

Costs

For many years, Dan has been highly rated in the directories (Chambers & Partners and Legal 500) for costs advice and advocacy. He is ranked in the Legal 500 2023 (Rank 1) and Chambers & Partners (Rank 2) as a leading junior in Costs.

He is a co-editor of the latest (4th) 2019 edition of Friston on Costs as well as the forthcoming 5th edition and edited the Security for Costs chapter.

Dan has very significant experience in all well-known areas of costs litigation, including non-party costs orders, security for costs disputes, commercial retainers/CFAs, solicitor-client disputes (Belsner and after), disputes under the fixed costs regime, inter partes disputes, the common law/Turner v Palomo jurisdiction, Part 36 issues, and all points of principle at detailed assessments.

Recently, Dan has acted in the following cases:-

- *The Shagang Giant* – costs assessment
- Assisting several large international firms recover their costs.
- *S of S for Health v Servier Laboratoires* (2022). Acting in several costs assessments in the Supreme Court.
- Involvement in the security for costs aspects of Mountain Ash Portfolio Ltd v Vasilyev [2021] EWHC 1853 (Comm) and Trappitt v GBT Travel Services (Chancery Division, 2022).

Dan was led by Alan Gourgey KC in the high-profile and successful appeal of Winros v GEHC [2021] EWHC 3410 (Ch).

He has also acted for Empreno/LIC in a raft of detailed assessments of the costs of receiving parties in Commercial Court litigation in 2021.

Infinity v Khan Partnership (Court of Appeal – whether the court takes into account the cost of an ATE premium in determining whether security is acceptable).

Flynn and Pfizer v CMA (Court of Appeal – is there a rule in non-CPR cases that regulatory authority is only liable to pay costs where it has acted unreasonably?).

Dial v Eastern Airways (changes of funding from DBA to CFA).

Dan also frequently assists on the drafting of CFAs, DBAs and other retainer documentation.

Commercial law

Dan regularly acts in and advises on disputes arising over commercial contracts. He has substantial experience of document-heavy commercial litigation from his years at Allen & Overy. More recent work includes:

- claim by Arriva The Shire against Easybus
- Commercial Court claims by insured against insurer and broker re: fires
- *One World v Elite*, QBD, 2013. Claim between two companies in the telecoms business and a dispute over the contract and standard form conditions
- claim by GP2 team against former driver (Bruno Senna)
- several High Court claims involving the need for urgent interlocutory relief/freezing orders etc.

Recent cases

Mehta v Howard Kennedy [2025] EWHC 1008 (SCCO) – Dan acted for solicitors in successful defence of £3m fees invoices in respect of litigation over £1bn. Dispute over CBAs, interim statute bills, estimates.

Gorestein v Sears Tooth [2025] EWHC 1114 (SCCO) – scope of s 74(3) of Solicitors Act 1974. Family proceedings.

Jones Day v Alta [2025] 5 WLUK 326 – successful recovery of monies due to solicitors in high value international litigation.

The Wine Enterprise Investment Scheme Limited v Crowe LLP [2024] – acting for liquidators of TWEISL in high value auditors' negligence claim.

Pan NOx Emissions Litigation [2024] EWHC 1728 (KB) – instructed in respect of costs aspects of largest group litigation claim brought in England & Wales.

Port Curlew Litigation [2024] – litigation costs and service charges; abuse of process.

Phones 4U Ltd v EE Ltd & Ors [2023] EWHC 2826 – post-trial costs issues.

Damages Based Agreements disputes [2023-2024] – involved in several high profile disputes relating to DBAs and their enforceability.

Shepherd Construction v Kingspan & others [2024] - insurance/non-party costs orders

Andrew Valmorbida [2023-24] – advice on professional negligence claims arising from loan enforcement and bankruptcy proceedings.

X v (1) Transcription Agency (2) Master James [2023] EWHC 1092 (Farbey J). Acted for successful D1 in leading case on the judicial exemption from data protection and the appropriate method of scrutinising withheld documentation.

The Estate of Mrs Rodd v Irwin Mitchell (2022). High Court (Ch Div) claim for negligence in respect of lost litigation. Settled.

Several claims by HNW individuals against firms of solicitors for negligent advice leading to commencement of unsuccessful litigation (2021 – 2022).

Comerford v Neumans (2022). Claim for negligent failure to amend statements of case. Settled.

Winros v GEHC [2021] EWHC 3410 (Ch). Led by Alan Gourgey KC in a hard-fought appeal to the High Court from the SCCO. C. £7m in costs in issue. The appeal before Trower J was successful in respect of s 58 CLSA compliance and valid termination of the retainer and the relevant CFAs held to be valid and enforceable.

Infinity v The Khan Partnership [2021] 1 WLR 4630; [2021] EWCA Civ 565. Dan appeared for the successful appellant in a case involving the relevance of the ATE premium when ordering security for costs.

Grondona v Stoffel & Co [2020] UKSC 42; [2021] AC 540; [2018] EWCA Civ 2031. Leading case on the illegality defence in professional negligence claims. Led by Michael Pooles KC in the Supreme Court.

Flynn & Pfizer v Competition and Markets Authority [2020] EWCA Civ 617. Scope of alleged rule that no costs order should be made against a regulatory authority unless it has acted unreasonably.

Re: A Barrister (2020) – acting for a Queens Counsel in respect of his claim for fees under CFA where the solicitors' CFA held to be unenforceable.

(1) Nawaz (2) Aziz v Birchfield solicitors (18.12.19, HHJ Hodge KC, sitting as High Court Judge). Acting for the defendant solicitors in a 3 day trial. Judge found in favour of the solicitors on the grounds of liability and causation.

Dial v Eastern Airways (13.11.19, Yip J). Successful appeal against discretionary decision of Master to refuse Cs their profit costs after detailed assessment.

Illingworth v Hull & East Yorkshire NHS Hospital Trust (HHJ Graham Robinson) 25.2.19. Jurisdiction to make costs order before substantive decision. See also Harland v South Tees (DJ Thomas 11.9.19).

Dial v Eastern Airways [2018] EWHC B1 (Costs). Dispute involving late changes in funding and settlement before trial, CFAs and DBAs.

Claim against a Barrister (2017 – 2018). Acted for a barrister in respect of alleged negligence in the conduct of a trial for rape in late 1990s, where claimant was wrongfully convicted. Claimant discontinued shortly before trial.

Lester v Vance Harris (2018). Acted for claimant in high value claim alleging negligence and breach of fiduciary duty against solicitors after entry by client into two disastrous investments. Settled at mediation.

Forrest v Ludlow Preston (July,2017) acted for defendant in High Court claim against IFAs for alleged negligence in investment in AIG bonds in 2007 – 2008. Settled on favourable terms shortly before trial.

Excis v Milfix (May 2017) – security for costs application in a high value arbitration.

Catalyst Management Services v Libya Investment Authority (Blair J, Commercial Court – 23rd October 2016) – substantial security for costs application in US$500,000,000 claim for management fees and consequential losses.

Re a Firm of Solicitors [2016] – ongoing advice on enforceability of numerous Damages Based Agreements entered into for purposes of group litigation.

QBE v Dowson Billington Solicitors [June 2016] – high value arbitration on insurance coverage dispute; professional negligence.

Maman v Certain Lloyds Underwriters [2016] EWHC 1327 (QB) amendment under CPR 17.4 where there has been a "genuine mistake" and whether a "description" of a party is adequate.

Numerous cases involving applications for relief from sanctions/extensions of time in the light of Mitchell and Denton (for applicants and respondents) [2014 – 2016].

Reeves-Fisher v HCA [2015] – High Court claim against solicitors for loss of litigation. Claimant discontinued shortly before strike out application.

Lukos v (1) Hadfield (2) Drysdales (10/4/15, HHJ Simpkiss) – professional negligence. Acted for D1 in a successful defence of a 4 day trial on a preliminary issue on limitation, involving mental capacity under s. 38 of the Limitation Act and s 14A date of knowledge. Cross-examination of leading experts in mental capacity.

Bathija v Lloyds Bank plc [2014] EWHC 4092 (Ch) – 5 day trial. Acted for Lloyd's Bank in a successful defence to a claim by a corporate customer for alleged late honouring of direct debit said to have put the company into liquidation – causation, contractual terms of IATA, reasonable foreseeability, company valuation.

Lord Chancellor v Taylor Wilcocks [2014] EWHC 3664 (QB), Globe J – successful opposition to appeal against refusal of extension of time for service of Particulars of Claim.

Mortgage Express v RBS t/a Colleys (2014) – High Court claim against valuer. Issues included whether D had valued the correct property, measure of damages and strict contractual warranties. Claim settled close to trial.

Arriva The Shires v easybus – High Court commercial dispute (2014).

Page v Hewetts & Fuller [2013] EWHC 2845 (Hildyard J); [2012] EWCA Civ 805; [2011] EWHC 2449 (Susan Prevezer KC). Claims against solicitors/fiduciaries. Determination in High Court (Ch D) and CA of numerous limitation issues including when a claim is "brought" under the Limitation Act 1980; what is required to be received by the court for proceedings to be "brought"; claims for breach of trust and

secret profits under ss 21. and 36 of the Limitation Act; deliberate concealment; constructive trusts.

ASN v A NHS Trust [2013] Master Cook. Professional negligence claim on one of first costs budgeting hearings under new regime. Reduced C's costs budget from nearly £1,000,000 to £470,000.

Mortgage Express v Abensons [2012] EWHC 1000, HHJ David Cooke, Lawtel – amendments made after expiry of the limitation period, "deliberate breach of fiduciary duty" and "deliberate concealment" (under s 32 of the Limitation Act 1980) and the mental element required for breach of fiduciary duty.

What others say

"Dan is excellent at costs and professional negligence. Dan is straightforward, helpful and a pleasure to work with." *Legal 500, 2026*

"Dan is always very well-prepared and has an excellent ability to build a good rapport with clients. In court, his advocacy skills are something to behold, calmness personified but with a ruthless streak to ensure that a client's case has the best possible chance of success." *Legal 500, 2026*

"His grasp of the issues of a case is exceptional, and any advice is provided with a keen commercial understanding of the bigger picture." *Chambers UK, 2025*

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"Dan is a very experienced and knowledgeable barrister. He has an ability to get through to the heart of a case effortlessly while also being very personable and approachable." *Chambers UK, 2025*

"Dan understands what is needed and adapts his approach to suit the case and the judge. He's very good on his feet and has an authoritative air about him." *Chambers UK, 2025*

"Dan is not only very pleasant and friendly to work with, but also super bright and highly effective." *Chambers UK, 2025*

"Dan Stacey is very experienced and a fine tactician, who always thinks deeply about how to resolve matters." *Chambers UK, 2025*

"Dan offers a wealth of knowledge. He provides insightful and pragmatic advice while also taking the client's wider objectives into account. His bedside manner with clients is second to none." *Legal 500, 2025*

"Dan is exceptional at costs litigation, and takes a real commercial approach to the advice he gives." *Legal 500, 2025*

"Dan Stacey is very pragmatic and commercial. His technical expertise before tribunals shines through and he is listened to attentively." *Chambers UK, 2024*

"When it comes to clients, Dan really understands their needs. When it comes to judges, he knows just how to engage them." *Chambers UK, 2024*

"Dan is brilliant and a very astute barrister." *Chambers UK, 2024*

"Dan"s advice was always clear. He was great in guiding the client through the negotiations." *Chambers UK, 2024*

"He is extremely quick, very bright and great at dealing with detail." *Chambers UK, 2024*

"Dan is a cool, calm and collected barrister. He is very astute, thoroughly prepared and tenacious when he has to be. His bedside manner with clients is wonderful." *Legal 500, 2024*

"Dan is very pragmatic in his approach, conscientious, precise, very knowledgeable on costs, and a good advocate." *Legal 500, 2024*

"Good balanced judgement and a calm and collected advocate. One of my go-to counsels." *Chambers UK, 2023*

"Dan is an excellent senior junior. He is measured, knowledgeable and a skilled advocate." *Chambers UK, 2023*

"Dan Stacey is very user-friendly, very responsive and an expert in costs." *Chambers UK, 2023*

"Very capable in claims against solicitors and works collaboratively." *Legal 500, 2023*

"Brilliant in this area. He is regularly instructed by solicitors around the country and is a true expert." *Legal 500, 2023*

Dan has been shortlisted by Legal 500 as Professional Negligence Junior of the Year 2022

“Very well respected, and well liked by solicitors.” “He’s incredible on paper and on his feet, and particularly good on complex matters.” *Chambers UK, 2022*

“He’s a very thorough and approachable barrister.” “When you send him instructions he lets you know his plan of action and very much makes you feel that your case is important to him.” *Chambers UK, 2022*

“His advice is clear and concise – he offers an excellent service.” *Legal 500, 2022*

“Dan has a first-rate legal mind. He is astute and precise, and his advice is invariably spot on and commercial. He always remains level-headed.” *Legal 500, 2022*

“Unabashed in setting the court straight and delivering time after time on his feet.” *Legal 500, 2021*

“He is an exceptional advocate, with a measured approach to cross-examination. Dan is an academic and thorough lawyer, and is able to identify the key issues in a case” *Legal 500, 2021*

“Dan has a really good grasp of his subject area and is able to deliver advice in a really digestible way. He’s an excellent advocate who really knows his craft when it comes to costs.” *Chambers UK, 2021*

“Great on his feet.” *Chambers UK, 2021*

“A pleasure to work with, he is very approachable, knowledgeable and professional.” *Chambers UK, 2020*

“Bright, articulate and a great team player. Very approachable and swift to respond.” *Chambers UK, 2020*

“He is very able and great on the detail” *Legal 500, 2020*

“A confident and knowledgeable advocate who reacts well on his feet” *Legal 500, 2020*

“Bright, articulate and a great team player…he is good on his feet. Very relaxed as an advocate; he always seems completely unfazed. He has a really nice style and gets good results” *Chambers UK, 2019*

“Very knowledgeable” *Legal 500, 2019*

“Impressive” *Legal 500, 2019*

“A pleasure to work with. He is superb on his feet, gives excellent advice on paper and in conference, and he’s always got time to speak. He is a very friendly, switched-on, clever guy” “A lawyer who gets up to speed quickly and is calm and effective throughout” *Chambers UK, 2018*

“Affable and unruffled, even by the toughest judicial reasoning” “Very pleasant to work with, quick, bright and confident in his advice” *Legal 500, 2017*

“There’s no area of professional negligence he doesn’t know about. His written and oral advice is very clear, and he’s genuinely very good to work with. He’s a go-to person.” “He is very committed to the client and gives great advice.” “He is assured and unflappable in court.” *Chambers UK, 2017*

“An all-round top performer and a huge asset to any team” *Legal 500, 2016*

“An extremely intelligent and academic lawyer, who is also approachable and always a pleasure to deal with” *Legal 500, 2016*

“He’s extremely confident; nothing fazes him and he exudes a certain calm and confidence that is a source of great comfort to the client.” “He’s very knowledgeable and gives clear and precise advice.” *Chambers UK, 2016*

“Strong expertise and exceptional intellect.” *Legal 500, 2015*

“Encyclopaedic knowledge of the costs rules and statutes.” *Legal 500, 2015*

“His preparation skills are so thorough. He’s good at identifying areas of potential risk, which he then closes off. A very determined advocate.” *Chambers UK, 2015*

“First rate.” *Legal 500, 2014*

“A very personable man who brings binocular vision to his cases. A strong overview of costs matters from multiple perspectives.” *Chambers UK, 2014*

Further information

Education:

- Magdalen College, Oxford (Modern History, First Class)
- City University (Diploma in Law)
- ICSL School of Law (Gray’s Inn Prince of Wales Scholar)

Appointments: Recorder 2022. Dan hears criminal cases in the Midland Circuit.

Talks/articles: Regular lectures on topical costs issues (Budana, CPR Part 36, fixed costs, proportionality, budgeting); issues in professional negligence claims (Dreamvar, BPE, illegality defences, limitation, scope of duty); contractual interpretation.

Recent articles in New Law Journal (September 2022) on Belsner [link to PDF]

Journal of Professional Negligence: Page v Hewetts and when a claim is brought (2016); Beecham Peacock v Enterprise Insurance (2015).

Personal: Travel, history, art, fly-fishing, reading, football (Crystal Palace FC), walking on the South Downs and in Wales, listening to all kinds of music, and two young daughters.

ICO Data protection registration number: **Z3633953**.

Dan Stacey is a barrister regulated by the Bar Standards Board. Click to view Dan Stacey’s Privacy Notice.

hailshamchambers

The "Insured" Defendant – the traps (and how to avoid them, as best you can)

Dan Stacey

1

The deep pockets of the insurer

- Must be worth "powder and shot".
- Practical advantages of an insured – deep pockets, ability to compromise, perceived preference not to incur costs.
- Terms of insurance – between insured and insurer.
- Tension – compulsory insurance to protect the public and the technical rules occasionally invoked by insurers to refuse cover.

2

Swain v The Law Society [1983] 1 AC 598, 618

- Purpose of such insurance
- *Swain v The Law Society* [1983] 1 AC 598, 618 - describing the statutory scheme of compulsory insurance which had recently come into existence:
- "In exercising its power under section 37 The Law Society is performing a public duty, a duty which is designed to benefit, not only solicitor-principals and their staff, but also solicitors' clients. The scheme is not only for the protection of the premium-paying solicitor against the financial consequences of his own mistakes, the mistakes of his partners and the mistakes of his staff, but also, and far more importantly, to secure that the solicitor is financially able to compensate his client. Indeed, I think it is clear that the principal purpose of section 37 was to confer on The Law Society the power to safeguard the lay public and not professional practitioners, since the latter can look after themselves."

3

Minimum Terms

- **SRA Indemnity Insurance Rules**
- These rules require firms that are authorised by the SRA to take out and maintain professional indemnity insurance.
- An authorised body carrying on a practice during any indemnity period beginning on or after 25 November 2019 must take out and maintain qualifying insurance under these rules with a participating insurer.
- Notwithstanding rule 2.1 above, an authorised body must take out and maintain professional indemnity insurance that provides adequate and appropriate cover in respect of current or past practice taking into account any alternative arrangements the body or its clients may make.
- An authorised body must ensure that its clients have the benefit of the indemnity insurance required under these rules and must not exclude or attempt to exclude liability below the minimum level of cover required under these rules.

Minimum Terms 2

- Civil liability

- Subject to the limits in clause 2, the insurance must indemnify each *insured* against civil liability to the extent that it arises from *private legal practice* in connection with the *insured firm's practice*, (including its *prior practice* and (unless run-off cover is provided in accordance with clause 5.3) any *successor practice*) provided that a *claim* in respect of such liability:
  - is first made against an *insured* during the *period of insurance*; or
  - is made against an *insured* during or after the *period of insurance* and arising from *circumstances* first notified to the *insurer* during the *period of insurance*.

Minimum Level of Cover for one claim

- Any one claim
  The *sum insured* for any one *claim* (exclusive of *defence costs*) must be, where the *insured firm* is a *relevant recognised body* or a *relevant licensed body* (in respect of activities regulated by the *SRA* in accordance with the terms of the body's licence) at least £3 million, and in all other cases, at least £2 million.
- Defence costs
  There must be no monetary limit on the cover for *defence costs*.

Aggregation

- One claim
  The insurance may provide that, when considering what may be regarded as one *claim* for the purposes of the limits contemplated by clauses 2.1 to 2.3 (inclusive):
  - all *claims* against any one or more *insured* arising from:
    - one act or omission;
    - one series of related acts or omissions;
    - the same act or omission, in a series of related matters or transactions;
    - similar acts or omissions, in a series of related matters or transactions, and
  - all *claims* against one or more *insured* arising from one matter or transaction will be regarded as one *claim*.

7

Fraud or dishonesty exclusion

No avoidance etc but Fraud or dishonesty

- 6.1 Prior cover
  Any *claim* in respect of which the *insured* is entitled to be indemnified under a professional indemnity insurance contract for a period earlier than the *period of insurance*, whether by reason of notification of *circumstances* under the earlier contract or otherwise.
- 6.8 The insurance may exclude liability of the *insurer* to indemnify any particular *person* to the extent that any civil liability or related *defence costs* arise from dishonesty or a fraudulent act or omission committed or condoned by that *person*, except that:
  - the insurance must nonetheless cover each other *insured*; and
  - the insurance must provide that no dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a *company*, all *directors* of that *company*, or in the case of an *LLP*, all *members* of that *LLP*.

8

Cyber and Data Exclusion

- Cyber, infrastructure and Data Protection Law

- The insurance may exclude, by way of an exclusion or endorsement, the liability of the insurer to indemnify any insured in respect of, or in any way in connection with:
- a *cyber-act*
- a partial or total failure of any *computer system*
- the receipt or transmission of malware, malicious code or similar by the *insured* or any other party acting on behalf of the *insured*
- the failure or interruption of services relating to *core infrastructure*
- a breach of *Data Protection Law*

9

Insurance Law

- Insured's right typically only arises at the moment that insured's liability ascertained by judgment award or settlement.
- Limitation – 6 years from ascertainment

10

Third Parties (Rights Against Insurers) Act 1930

- Statutory transfer of Insured's rights against Insurer when insolvency event occurs.
- In Re Harrington Motor Company, Limited. Ex parte Chaplin [1928] Ch. 105.
- The insurer "stands in the shoes" of the Insured and therefore raise such defences as Insured might have.
- But have to establish "ascertained liability" against Insured.

11

Normid Housing Association Ltd v Ralphs [1989] 1 Lloyds Rep 265

- *Normid Housing Association Ltd v Ralphs [1989] 1 Lloyds Rep 265*
- S 3 of the 1930 Act indicates that in the ordinary case a third party will not be able to complain of an agreement made between insurer and insured even after liability has been incurred to the third party, if the agreement has been made before the commencement of the bankruptcy

12

Third Parties (Rights Against Insurers) Act 2010

- Bradley v Eagle Star Insurance Co [1989] 2 W.L.R. 568,
- Effect from 1st August 2016

1 Rights against insurer of insolvent person etc

(1)This section applies if—

(a) a relevant person incurs a liability against which that person is insured under a contract of insurance, or

(b) a person who is subject to such a liability becomes a relevant person.

(2) The rights of the relevant person under the contract against the insurer in respect of the liability are transferred to and vest in the person to whom the liability is or was incurred (the "third party").

(3)The third party may bring proceedings to enforce the rights against the insurer without having established the relevant person's liability; but the third party may not enforce those rights without having established that liability.

13

Redman v Zurich Insurance Plc [2017] EWHC 1919

- A relevant person "incurs a liability" under section 1 of the Third Party (Rights Against Insurers) Act 2010 when the cause of action is complete and not when the claimant has established the right to compensation whether by a judgment or otherwise;

14

Desai v Wood [2025] EWCA Civ 906

- C claimed against D – who before insolvency had been paid out insurance monies by insurer.
- Could C require priority over the insurance sums?
- *Re Harrington Motor Co Ltd, ex p Chaplin* [1928] Ch 105
- C has no beneficial entitlement to the insured's liability insurance policy or its proceeds, whether before or after the insured becomes insolvent.

15

Makin v Protec Security Group Ltd & Anor [2026] EWCA Civ 1367

- *Scotland Gas Networks v QBE UK Ltd* [2024] CSIH (Inner House) section 1(4) of the 2010 Act removes the ability of insurers to challenge the amount of the liability that is held to be proved in a judgment (or an arbitral award or an enforceable agreement) pursuant to that section. Is this English law?
- Makin v Protect Security: CA didn't dissent from the decision but in watery terms (par : "I consider that the best course is not to seek to decide the issue and to leave its determination to a case where it must be decided. I therefore express no view on it one way or the other."

Costs position – Various Cs v Giambrone and AIG [2019] EWHC 34 (QB)

- D had taken sig decisions in litigation.
- Foskett J: "In my view, where an indemnity insurer substantially relinquishes control of the conduct of the litigation to the insured (or fails to take steps to control it when there are grounds for intervening), and does so in the expectation that it will be immune from a costs liability towards the opposing party if the opposing party is successful, that expectation is open to be falsified by the court in a section 51 application, particularly if the prospects of success for the insured are assessed as poor."





James Hall
Gatehouse Chambers

"Limitation: the age-old question; recent cases on s14A and s32 LA 1980"

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Practice overview

James specialises in professional negligence, commercial litigation and property disputes. His professional negligence work relates primarily to the financial services and property sectors though he also deals with a wide variety of claims arising from transactions, projects and misconduct of litigation. He deals with a variety of commercial claims with a focus on disputes connected with his professional negligence practice, such as insurance disputes, conspiracy claims and FS sector work including claims against the FSCS. His property work generally relates to title issues, land registration issues, mortgages and trusts issues and often overlaps with his professional negligence practice.

James is instructed in many high-value and complex matters; details of many of his cases are set out in the CVs available in the practice area links on the left.

He understands the need not only for technical excellence but also the commercial imperatives of his clients, which range from large lending institutions and professional indemnity insurers to self-insured businesses, other businesses and high net worth individuals. He focuses on strategy and cost-benefit analysis as well as legal finesse.

Earlier in his career he spent several years as an employed barrister in an international law firm, developing and leading a team of specialist lawyers, giving him invaluable insight and understanding of the workings of solicitors' firms and their clients.

He has regularly contributed to leading texts and had many articles published in industry periodicals and peer-review journals. He has also spoken at the Professional Indemnity Forum 2025; the Professional Negligence Lawyers Association 2022 Online Conference; the CML Fraud Conference; The Legal Week Banking Litigation and Regulation Forum; and the Legal Business Financial Regulation and Disputes Summit. He frequently provides seminars and training on a diverse range of topics.

James won the Legal 500 Professional Negligence Junior of the Year Award in 2024. He was nominated for the same award in 2025 and was nominated as Professional Negligence Junior of the Year 2025 by Chambers UK Bar.

Financial professionals, insolvency professionals, directors & officers

James Hall specialises in professional negligence and financial services-related litigation. Apart from his time practising in chambers since 2001, between 2007 and 2011 James spent four years at an international law firm as an employed barrister, developing and leading a specialist team of lawyers. James' time in-house gave him an invaluable understanding of both the commercial realities of practice in a full service law firm and the business of the financial services sector.

James builds on his technical excellence by understanding that strategic overview and costs/benefits analysis are also key to finding the best solutions for commercial disputes.

He is ranked in Chambers UK in the field of Professional Negligence, being described as '*especially strong on claims relating to tax mitigation schemes'* and as having '*an innovative approach to problem solving...the experience he has gained from working in-house gives his advice that commercial and pragmatic edge that the clients love*'.

James is also ranked in the Legal 500 as a leading junior in Professional Negligence and has been described as having '*excellent technical knowledge but is also very commercially savvy*.'

He is also recommended for professional negligence in Who's Who Legal.

James has spoken at the Legal Week Banking Litigation and Regulatory Reform Conference on 'Ticking Timebombs: Tax avoidance scheme claims' and at the Legal Business Financial Regulation and Disputes Summit (where he also chaired a panel discussion) on extensions to the FOS jurisdiction; he has also been quoted in The Times on similar issues and has been quoted in leading insurance sector magazine Post on solicitors' professional indemnity policy issues. He has also spoken on professional indemnity insurance aggregation issues at the Council of Mortgage Lenders' Annual Fraud Conference and has regularly delivered training seminars to law firms.

He is a substantial contributor to Lender Claims (Edited by Tomlinson KC and Grant, Sweet and Maxwell, July 2010) in relation to subjects including equitable securities over land. James is also a contributor to Construction Professional Indemnity Insurance (Sweet and Maxwell, 2018).). He is also a contributor to Insurance Broking Practice and the Law, Informa.

James' peer-reviewed article 'Breach of Trust- the strongest of all Lender Claims?' was published in both the Journal of Professional Negligence (Vol 28 no. 2) and Trust Law International (Vol 26 no.4)(both 2012). James also co-authored the article 'Breach of trust- commercial lenders beware- but also an opportunity?' in the Mortgage Finance Gazette (2013).

Financial Services /Tax Advice/Accountancy-related claims

- *HNW individuals v Insurance broker* – substantial claim against broker for failure to advise on condition precedent and non-disclosure issues relating to construction works and loss caused by fire.
- *Sub-contractor v Insurance broker* – claim against broker for failure to advise on policy terms, failure to present risk fairly and failure to notify insurers in relation to claims arising out of major infrastructure project.
- *Trustees v Financial advisor* – claim for negligence re: communications failures over imminent lapse of life insurance policy.

- *Consultant wealth manager v Accountancy firm* – claim for negligence re: advice on incorporation and sale of goodwill.
- *Bache v AFH* – claim for negligence against financial advisors relating to pension transfer arrangements.
- *Harland v St James Place Wealth Management plc & Anor* – misselling of/negligent advice on investments linked to carbon-trading/tax mitigation schemes, quantum in excess of £400,000.
- *Mr and Mrs Carpenter v St James Place Wealth Management plc & Anor* – relating to the misselling of/negligent advice on investments linked to new technology/tax mitigation schemes, quantum in excess of £750,000.
- *Various investors v St James Place Wealth Management plc & Others* – relating to the misselling of/negligent advice on investments linked to new technology/tax mitigation schemes (including Epocket, VIP and Vismail), quantum in £millions.
- *Various investors v Openwork Limited & Others* – relating to the misselling of/negligent advice on investments linked to new technology/tax mitigation schemes (Including Icebreaker, Betex and Prefect Software), quantum in £millions.
- *Individuals v Accountants* – relating to alleged negligent investment advice on a qualifying registered overseas pension scheme (QROPS), quantum £8,000,000.
- *Various investors v Valuation consultancy subsidiary of major lender* – negligent valuation of business/rights underlying new technology/supporting tax mitigation schemes, quantum in £millions (being led at some stages by Patrick Lawrence KC, 4 New Square- dozens of high net worth individual clients and 4 schemes involved).
- *Nahal & Gill v Crosby Insurance* – Claim against insurance brokers in relation to material non-disclosure/ misrepresentation in relation to commercial property insurance, quantum in excess of £150,000.
- *Jarvis v Royal Skandia Life Assurance & Others* – Claim against insurer and financial adviser re: tax liability on encashment of policy, quantum circa £25,000, jurisdiction and duty of care issues.
- *Various investors v HSBC Private Bank (UK) Limited* – relating to the alleged misselling of/negligent advice on film partnership/tax mitigation schemes, quantum in the £millions.
- *Three investors v IFA firm in the North-West* – relating to alleged misselling of/negligent advice on UCISs with real property, often abroad, as the underlying assets, quantum circa £2million.
- (And on a related issue: *Various investors in the 'Icebreaker' scheme v Enterprise Insurance Co Plc* – enforceability of insurance policy/material non-disclosure/misrepresentation).
- *Individual v Accountants with in-house financial advisors* – relating to alleged misselling of/negligent advice on Scottish commercial property syndicate/tax mitigation schemes.
- *Individual v Wealth Management PLC* – relating to alleged negligent advice in relation to pension funds invested in property syndicates and structured products.
- *Cullum v Towergate Financial* – alleged misselling of/negligence advice on medical drug-related tax mitigation scheme, quantum in excess of £1,300,000.
- *Large farming company v Insurance Brokers* – claims for over £200,000 against insurer and insurance brokers in relation to fire at farm premises caused either by arson or self-heating of hay; issues as to exclusion and coverage and whether failure by brokers to advise on those issues.
- *Individual v Root 2* – claim relating to negligent advice on spread-betting/income tax avoidance scheme.
- *HNW Individuals v Accountants in the North-East* – claim worth circa £10million in relation to alleged advice on investment in a QROPS.
- *Individual and company specialising in optical supplies v Accountants in the South-East* – relating to failure to implement instructions regarding shareholdings and failure to advise on director's loan/s455 tax issues.
- *London estate agency v Large accountancy practice* – relating to advice on amortisation of goodwill/tax relief.

- *South Wales/South West based accountants v Music industry and promotions company* – counterclaim for in excess of £500,000 relating to alleged negligent preparation of accounts and bookkeeping and failure to advise.
- *HNW individuals* (former shareholders in music and events promotion business) *v South Wales/South West based accountants* – claim for around £18million for underlying alleged negligence in preparation of accounts and bookkeeping and failure to produce proper management accounts and modelling/forecasting for high value share sale.

Other work relating to alleged misselling of financial products

- *LLP and Ltd Co. clients v HSBC Bank plc* – breach of statutory duty, misrepresentation and/or breach of duty of care re: swap IRHPs – basic loss in excess of £1.3million, possible consequential loss claim of £4.35million.
- *Ltd co. client v Barclays Bank plc* – breach of statutory duty, misrepresentation and/or breach of duty of care re: structured collar/swap IRHP – basic loss in excess of £300,000, plus consequential losses.
- *2 x Ltd co. clients v HSBC Bank plc* – breach of statutory duty, misrepresentation and/or breach of duty of care re: swap and cap IRHPs- basic loss over £160,000, plus consequential losses.
- *Partnership client v Lloyds Bank plc* – misrepresentation/breach of duty of care re: alteration from variable to fixed rate tailored business loan- basic loss over £165,000, plus substantial consequential losses estimated at around £600,000.
- *2 x Ltd co. clients and 1 individual v Multi Units France, Societe D'Investment a Capital Variable S.A. & Lyxor International Asset Management S.A.S* – misrepresentation/breach of contract/breach of duty of care relating to stock market volatility tracking/index-linked investments – primary loss circa £500,000 plus consequential losses, jurisdiction and applicable law issues.
- *Clarke v Virgin Money plc* – representing and advising defendant lender (assignee of original lender) in relation to claim for alleged breaches of statutory duty and/or negligence regarding substantial residential, self-cert interest-only mortgage loan.
- *Various Investors v FSCS* – advice on claims against the FSCS relating to UCIS.
- *Investors in Icebreaker scheme v FSCS* – relating to insolvent Gibraltarian insurer and whether policies relating to tax mitigation scheme are enforceable (and whether FSCS should compensate given the insurer's insolvency)
- *Carr & Ors v Formation Group plc & Ors* – representing first defendant in relation to claim for knowing receipt, alleged bribery, dishonest assistance and unlawful means conspiracy arising out of alleged secret commissions on selling of tax mitigation schemes.
- *HNW foreign national v UK plc and insurer* – in relation to misselling of corporate bond and/or of bond offering insurance policy.

Legal professionals

James handles a wide variety of claims against legal professionals, often related to his expertise in commercial litigation and property transactions as well as banking and finance disputes and corporate transactions.

He is ranked in Chambers UK in the field of Professional Negligence, being described as "*especially strong on claims relating to tax mitigation schemes*" and as having "*an innovative approach to problem solving...the experience he has gained from working in-house gives his advice that commercial and pragmatic edge that the clients love*".

James is also ranked in the Legal 500 as a leading junior in Professional Negligence and has been described as having "*excellent technical knowledge but is also very commercially savvy*".

He is also recommended for professional negligence in Who's Who Legal.

James spoke on solicitors' liability, rectification and aggregation at the Professional Negligence Lawyers Association 2022 Online Conference.

Recent cases

- Lender claims including breach of trust and breach of fiduciary duty; and including e.g. a multi-million pound claim, on behalf of Wave Lending, against solicitors and arising out of seven linked transactions; and another multi-million pound claim, on behalf of Mortgage Express, against solicitors and arising out of twenty-six linked transactions, re: both commercial and residential lending, mainly claimant (for high street banks and intermediary-led lenders, in securitised and non-securitised lending); claims against solicitors (and valuers) for peer-to-peer lending business; but also some defendant work.
- Claims by lenders relating to accidental discharges of mortgages at the Land Registry.
- Acting for claimants or defendants in claims made by large and SME companies and private clients in relation to:
  - Corporate transactions (e.g. restructures, SPAs and transfers of shareholdings).
  - Commercial and residential conveyancing, e.g.:
    - failure to protect business tenancy renewal rights- complex and substantial losses resulting;
    - failure to protect option agreements relating to business premises;
    - errors in drafting of commercial leases;
    - conveying areas of agricultural land not intended to be conveyed;
    - alleged failure to advise on restrictive covenants;
    - failure to advise on effect of overage clauses;
    - failure to advise on Listed Buildings Consent issues;
    - failure to advise on accessway maintenance and site layout issues on development site;
    - failure to advise on various risks in off-plan flats purchase;
    - failure to progress commercial conveyancing leading to loss of finance and delayed development;
  - Conduct of litigation, including e.g., defending a reputable West End firm in relation to alleged negligence in freehold enfranchisement proceedings; negligent conduct of matrimonial proceedings in relation to an insurance policy asset; and negligent conduct of ancillary relief proceedings in relation to failure to advise on investigations, evidence, and availability of remedies.
  - Administration of deceased's estate, relating to failure to realise investment prior to investment fund becoming insolvent.
  - Tax planning including inheritance tax and capital gains tax advice, planning and mitigation schemes.

Property Professionals

James' practice has always involved him in a wide variety of property disputes and this has led him into handling the professional negligence claims associated with property transactions as well. His experience of claims against solicitors is dealt with at the Professional Liability – Legal Professionals part of his profile. His recent work involving other property professionals is listed below.

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He is also recommended for professional negligence in Who's Who Legal.

Recent cases

- Numerous lender claims against surveyors and valuers, including:
  - claims by banks, building societies and other term lenders (securitised and non-securitised) relating to commercial and residential properties;
  - claims by bridging lenders;
  - claims by development finance companies including against monitoring surveyors; and
  - a claim by a peer-to-peer lending platform.
- Private client claims against surveyors and valuers (including in relation to the valuation of businesses and sale value of real property) ranging in value from tens of thousands to several millions of pounds.
- Claim against an architect for negligent design in a barn and cellar conversion.
- Claims against an estate agency with in-house architect and project manager and against separate architects relating to design of barn conversion and boundary encroachment.
- Claim against architects, project managers, drainage engineers (and solicitors) by car dealership in relation to various issues on a development site.
- Claim by a major household insurer against its loss adjusters, for loss of the chance to bring various subrogated recovery actions.
- Claim for negligence against professional well-drilling contractor re: borehole drilling operation.

Commercial dispute resolution

Banking & finance

James has particular expertise in loans, mortgages and guarantees as well as equitable securities. He has extensive knowledge of both commercial and residential secured lending and of related issues e.g. securitisation, title insurance and land registration.

He is ranked in Chambers UK in the field of Professional Negligence, being described as "*especially strong on claims relating to tax mitigation schemes*" and as having "*an innovative approach to problem solving...the experience he has gained from working in-house gives his advice that commercial and pragmatic edge that the clients love*".

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He is a substantial contributor to Lender Claims (Edited by Tomlinson KC and Grant, Sweet and Maxwell, July 2010) in relation to subjects including equitable securities over land. James is also a contributor to Construction Professional Indemnity Insurance (Sweet and Maxwell, 2018).

James' peer-reviewed article 'Breach of Trust- the strongest of all Lender Claims?' was published in both the Journal of Professional Negligence (Vol 28 no. 2) and Trust Law International (Vol 26 no.4)(both 2012). James also co-authored the article 'Breach of trust- commercial lenders beware- but also an opportunity?' in the Mortgage Finance Gazette (2013).

See James' professional negligence page for details of the wide variety of financial services-related professional negligence and alleged misselling claims that he has dealt with.

Recent *Reported Cases*

- *Commercial First Business Limited v Munday* [2014] EWCA Civ 1296 (issues over 'all monies' charges, estoppel, collateral contracts);
- *Carr v Formation Group Plc* [2018] EWHC 3575 (Ch) (claim arising out of alleged secret commissions on selling of tax mitigation schemes).

Related work

- Complex mortgage litigation
- "Title rectification" – the use of various property and commercial law doctrines to perfect or achieve best possible security
- Fraud and undue influence in the creation of loans, securities and guarantees
- Cross-collateralisation – consolidation and "all monies" charges
- Breach of trust in relation to mortgage advances
- Proceedings to establish and/or enforce equitable securities e.g. by way of subrogation
- Professional negligence in relation to secured lending and commercial lending generally
- Secret commissions/breach of fiduciary duty
- Land registry adjudication and indemnity claims
- Freezing injunctions and similar relief

Related cases

- Numerous lender claims against solicitors for negligence, breach of trust and breach of fiduciary duty and against valuers for negligence, for high street banks ad intermediary-led lenders, securitised and non-securitised accounts, ranging up to claims involving twenty-six linked transactions and multi-million pound losses.
- *Commercial first Business Limited v Munday* [2014] EWCA Civ 1296- issues over 'all monies' charges, estoppel, collateral contracts.
- *Southern Pacific Mortgage Limited v Mahmood* – acting for the lender claimant seeking rescission of an erroneous e-DS1, so as to restore its charge; issue over onward transfer and s29 Land Registration Act 2002.
- *Nationwide Building Society v Onadeko & others* – acting for the lender claimant seeking rescission of an erroneous e-DS1.
- *Wave Lending Limited v Rahman & PBG* – advising the lender claimant on title rectification where security and borrower's proprietorship registered in respect of the wrong title, and interconnection with adjoining flat; advising on linked professional negligence claim against solicitors.

- *Virgin Money v Clarke* – acting for lender claimant in mortgage possession claim with counterclaim (and purported defence) by defendant for 'misselling' of self-cert, interest only loan.
- *Forensic Recovery Limited v West Bromwich Building Society* – advising trustee in bankruptcy on claim re: appropriation to debts and unjust enrichment.
- *McCaul v Newcastle Building Society* – acting for lender in mortgage possession claim involving landlocked property, borrower contesting validity of exercise of power of attorney to secure charges over neighbouring titles, s58 LRA 2002 issues, attempted appeal by borrower and difficulties in sale in possession.
- *Carr & Ors v Formation Group plc & Ors* – representing first defendant in relation to claim for knowing receipt, alleged bribery, dishonest assistance and unlawful means conspiracy arising out of alleged secret commissions on selling of tax mitigation schemes.
- *HNW foreign national v UK plc and insurer* – in relation to misselling of corporate bond and/or of bond offering insurance policy.

Commercial litigation

James Hall specialises in commercial litigation, professional negligence and financial services-related litigation. Apart from his time practising in chambers since 2001, between 2007 and 2011 James spent four years at an international law firm as an employed Barrister, developing and leading a specialist team of lawyers. James' time at Eversheds gave him an invaluable understanding of both the commercial realities of practice in a full service law firm and the business of the financial services sector.

James builds on his technical excellence by understanding that strategic overview and costs/benefits analysis are also key to finding the best solutions for commercial disputes.

He is ranked in Chambers UK in the field of Professional Negligence, being described as "*especially strong on claims relating to tax mitigation schemes*" and as having "*an innovative approach to problem solving...the experience he has gained from working in-house gives his advice that commercial and pragmatic edge that the clients love*".

James is also ranked in the Legal 500 as a leading junior in Professional Negligence and has been described as having "*excellent technical knowledge but is also very commercially savvy*".

He is also recommended for professional negligence in Who's Who Legal.

He has spoken at the Legal Week Banking Litigation and Regulation Forum on 'Ticking Timebombs: Tax avoidance scheme claims'; at the Legal Business Financial Regulation and Disputes Summit (where he also chaired a panel discussion) on extensions to the FOS jurisdiction; and on professional indemnity insurance aggregation issues at the Council of Mortgage Lenders' Annual Fraud Conference.

He is a substantial contributor to Lender Claims (Edited by Tomlinson KC and Grant, Sweet and Maxwell, July 2010) in relation to subjects including equitable securities over land. James is also a contributor to Construction Professional Indemnity Insurance (Sweet and Maxwell, 2018). He is also a contributor to Insurance Broking Practice and the Law, Informa.

James' peer-reviewed article 'Breach of Trust- the strongest of all Lender Claims?' has been published in both the Journal of Professional Negligence (Vol 28 no. 2) and Trust Law International (Vol 26 no.4)(both 2012). James also co-authored the article 'Breach of trust- commercial lenders beware- but also an opportunity?' in the Mortgage Finance Gazette (2013).

Recent Reported Cases

Agents Mutual Limited v Moginie James Limited [2016] CAT 15 (on applying the CPR costs management regime in a case before the Competition Appeals Tribunal);

Bridgeco Limited t/a Octopus Property v Ward Williams Associates [2022] EWHC 786 (TCC) (successful application for non-party disclosure under CPR 31.17; whether previous settlement agreement with the non-party precluded the making of the order sought);

Commercial First Business Limited v Munday [2014] EWCA Civ 1296 (issues over 'all monies' charges, estoppel, collateral contracts);

Freemont (Denbigh) Ltd v Knight Frank LLP [2014] EWHC 3347 (Ch) (claim against commercial valuer worth £8-10million);

Carr v Formation Group Plc [2018] EWHC 3575 (Ch) (claim arising out of alleged secret commissions on selling of tax mitigation schemes).

Commercial Litigation Work

Including (anonymised where appropriate):

- *Agents' Mutual Limited v Moginie James Limited* (with Tom Grant KC)- high profile claim for breach of contract, misrepresentation and breach of competition law regarding the On The Market online property portal.
- *Carr & Ors v Formation Group plc & Ors* – representing first defendant in relation to claim for knowing receipt, alleged bribery, dishonest assistance and unlawful means conspiracy arising out of alleged secret commissions on selling of tax mitigation schemes.
- *CK-CK Limited v NFU Mutual Insurance* – advising on policy avoidance/material non-disclosure issues.
- *SIG v NDM; & NDM v SIG* – linked claims concerning supply of timber, terms of agreement, alleged fraud and breach of fiduciary duty as agent.
- *AB Agri v (1) Riddell (2) Dodd* – circa £800,000 claim on guarantee, allegations of misrepresentation, duress, non est factum, interpretation issues.
- *Cartrefi Fforsaron Homes v Wright* – claims for debt for construction of timber-framed housing, dispute as to terms.
- *Registered charity domiciliary care provider v Welsh unitary local authority* – claim for inducement of breach of contract between main contractor and claimant subcontractor.
- *Macron v Ginn* – advising Italian sportswear manufacturer on enforceability of guarantee.
- *Multequip v various guarantors* – claims on guarantees- issues of interpretation and whether guarantee or indemnity.
- *WH Leach v HD Drilling* – claim for negligence re: borehole drilling operation.
- *Black Clawson Limited v AbbFab Engineering Limited* – claim for deceit and other causes of action- re: sub-contract for machine for export, worth circa £750,000-£1m.
- Advising re: dispute over terms of credit insurance.
- Advising Attorney General of the Falkland Islands re: conversion claim regarding illegally caught Patagonian Toothfish.
- Professional negligence work involving solicitors, surveyors, financial advisors and other professionals (see separate CV).

- Insurance issues – interpretation, material non-disclosure and misrepresentation, fraudulent claims (see also Insurance section).
- Freezing orders and other urgent interim relief in circumstances of fraud.
- *LLP v Substantial solicitors' practice in the South-West* – multi-million pound claim against solicitors for conspiracy to use unlawful means to assist debtors in defrauding creditors.
- *Carr & Ors v Formation Group plc & Ors* – representing first defendant in relation to claim for knowing receipt, alleged bribery, dishonest assistance and unlawful means conspiracy arising out of alleged secret commissions on selling of tax mitigation schemes.
- *HNW foreign national v UK plc and insurer* – in relation to misselling of corporate bond and/or of bond offering insurance policy.

Professional indemnity insurance

James' specialist practice in professional liability work frequently requires him to advise on aspects of professional indemnity policies, both for insurers and insureds, for example in relation to:

- Extent of cover, interpretation of policy clauses and exclusions
- Declinature for fraud, material non-disclosure, misrepresentation, breach of warranty or lack of fair presentation
- Aggregation issues
- The Third Parties (Rights Against Insurers) Acts

Related work

James has advised in substantial professional indemnity insurance disputes including, by way of examples:

- Dispute between substantial accountancy practice and insurer, as to exclusions, material non-disclosure, misrepresentation, breach of warranty.
- Dispute between former solicitor and insurer, as to alleged fraud in over 100 conveyancing transactions.
- Claim by lender against conveyancing solicitors where insurers had purported to aggregate many claims leading to potential shortfall in the millions of pounds.

He is ranked in Chambers UK, Legal 500 and Who's Who Legal in the field of Professional Negligence.

James is a contributor to Construction Professional Indemnity Insurance, Sweet and Maxwell, 2018. He is also a contributor to Insurance Broking Practice and the Law, Informa. He has previously spoken on professional indemnity insurance aggregation issues at the Council of Mortgage Lenders' Annual Fraud Conference. He has also been quoted in leading insurance sector magazine Post on solicitors' professional indemnity policy issues.

Insurance coverage

James regularly advises on aspects of insurance policies, both for insurers and insureds, for example in relation to:

- Extent of cover, interpretation of policy clauses and exclusions
- Declinature for fraud, material non-disclosure, misrepresentation, breach of warranty or lack of fair presentation
- Aggregation issues
- The Third Parties (Rights Against Insurers) Acts

He is ranked in Chambers UK, Legal 500 and Who's Who Legal in the field of Professional Negligence.

James is a contributor to *Construction Professional Indemnity Insurance*, Sweet and Maxwell, 2018. He is also a contributor to Insurance Broking Practice and the Law, Informa. He has previously spoken on professional indemnity insurance issues at the Council of Mortgage Lenders' Annual Fraud Conference and at the Professional Negligence Lawyers Association annual conference. He has also been quoted in leading insurance sector magazine Post on solicitors' professional indemnity policy issues.

Related work

James has advised in substantial insurance disputes including, by way of examples:

- Dispute between policyholder (subcontractor on transport infrastructure project) and primary and excess layer insurers in relation to aggregation, notification and fair presentation of risk.
- Dispute between insurer and residential landlord policyholder/third parties in relation to notification, insurable interest and loss relating to escape of water in premises sold to third parties.
- Dispute between substantial accountancy practice and insurer, as to exclusions, material non-disclosure, misrepresentation, breach of warranty.
- Dispute between former solicitor and insurer, as to alleged fraud in over 100 conveyancing transactions.
- Claim by lender against conveyancing solicitors where insurers had purported to aggregate many claims leading to potential shortfall in the millions of pounds.
- Dispute with bond offering insurer as to remit of policy, reliance on Third Parties (Rights Against Insurers) Act 2010.
- Advising on a business combined policy in relation to theft of and damage to property and goods where material non-disclosure was alleged.

Insurance funded disputes

James regularly appears in and advises on claims where either or both parties are insured, including professional negligence/indemnity cases and also has substantial experience acting for household insurers in subrogated recoveries claims.

Many of his cases also involve BTE or ATE insurance funding.

For further details of James' experience, see the other practice areas on his profile, most of which include cases where insurers have been involved.

Real property & mortgages

James has throughout his career advised on and appeared in a large number of property disputes for a variety of client types.

Related work

- Enforceability of contracts for sale
- Boundary disputes
- Easements

- Proprietary estoppel and trusts
- Rectification of deeds and documents and other equitable relief
- Undue influence and co-owner/occupier disputes
- Landlord and tenant- relief from forfeiture
- Reconstruction of conveyancing transactions
- Equitable subrogation
- Land registration issues, priority of mortgages and other interests in land
- Title insurance
- Fraudulent transactions
- Land Registry adjudications and Land Registry indemnity claims.
- Freezing injunctions and similar relief

Recent cases

- *Barclays Bank UK Plc v Terry* [2023] EWHC 2726 (Ch) [2023] EWHC 3113 (Ch) – representing the representative defendants (under CPR 19.8) in a claim for rescission of erroneous mortgage discharges, affecting over 5,000 registered titles.
- *Commercial First Business Limited v Munday* [2014] EWCA Civ 1296 – issues over 'all monies' charges, estoppel, collateral contracts.
- *Natwest Bank plc v Fox-Davies & 2 others* – acting for the claimant seeking, as executor of a will, to register title in the face of attempted adverse possession by defendants.
- *Southern Pacific Mortgage Limited v Mahmood* – acting for the lender claimant seeking rescission of an erroneous e-DS1, so as to restore its charge; issue over onward transfer and s29 Land Registration Act 2002.
- *Nationwide Building Society v Onadeko & others* – acting for the lender claimant seeking rescission of an erroneous e-DS1.
- *Wave Lending Limited v Rahman* – advising the lender claimant on title rectification where security and borrower's proprietorship registered in respect of the wrong title, and interconnection with adjoining flat.
- *Virgin Money v Clarke* – acting for lender claimant in mortgage possession claim with counterclaim (and purported defence) by defendant for 'misselling' of self-cert, interest only loan.
- *Timegold Limited v Kaur* – claim for declaratory relief as to constructive trust and/or proprietary estoppel in order to enforce defective contract for sale of property.
- *Hanmer v Vale of Glamorgan* – advising local authority on long running boundary dispute.
- *McCaul v Newcastle Building Society* – acting for lender in mortgage possession claim involving landlocked property, borrower contesting validity of exercise of power of attorney to secure charges over neighbouring titles, s58 LRA 2002 issues, attempted appeal by borrower and difficulties in sale in possession.
- *Garden centre v Landlord's successor in title* – re: rectification of commercial lease as to rent review machinery
- *Commercial landlord v tenants* – re: rectification of commercial leases as to rent review machinery

Professional associations

- Professional Negligence Bar Association
- Professional Negligence Lawyers Association
- London Bar Association (formerly the London Common Law and Commercial Bar Association)
- Association of London Welsh Lawyers
- British Insurance Law Association

- Financial Services Lawyers Association

Qualifications

LLB Hons (Cardiff)

Recommendations

James is ranked as a leading junior for Professional Negligence in both Chambers UK and Legal 500. He is also recommended for professional negligence in Who's Who Legal.

- *"Quite simply, he is the best barrister in the field of professional negligence."* (Chambers UK 2027, Professional Negligence)
- *"He quickly grasps both the legal issues and risks, and the commercial nature of a case, providing useful practical advice to aid strategy. When needed, he is both persuasive and well received in court."* (Chambers UK 2027, Professional Negligence)
- *"He is my go-to barrister for professional negligence claims; he should be a silk."* (Chambers UK 2027, Professional Negligence)
- *"He knows exactly what you need before you even ask."* (Chambers UK 2027, Professional Negligence)
- *"A standout barrister and the perfect mix of technical and commercial, I never hesitate to recommend him."* (Chambers UK 2027, Professional Negligence)
- *"Very responsive, thorough, and highly intellectual, his critical analysis is razor-sharp, and he is unafraid to challenge clients. His written advocacy gets quickly to the heart of the matter. The person you want in your corner for professional negligence matters."* (The Legal 500 2027, Professional Negligence)
- *"James Hall has real expertise in professional negligence cases, particularly arising out of property transactions. He is very commercially aware and involved in setting the strategy for a case."* (Chambers UK 2026, Professional Negligence)
- *"James is sensible, commercial and knowledgeable."* (Chambers UK 2026, Professional Negligence)
- *"James Hall has a unique ability to explain complex legal issues in a way that is easily understood by clients and colleagues alike. It's great to work with him, he is consistently dependable."* (Chambers UK 2026, Professional Negligence)
- "James is simply wonderful to work with and has everything you would want in a barrister. He leaves no stone unturned and his thorough preparation means his advocacy is a joy to watch." (The Legal 500 2026, Professional Negligence)
- *"James is everything you want in a barrister. He is thorough, diligent, knowledgeable, commercial and great with clients. As an advocate he is always well-prepared, persuasive, and quick on his feet."* (The Legal 500 2025, Professional Negligence)
- *"James is a tour de force. He understands solicitors better than anyone else and I would not worry about putting him up against anyone."* (Chambers and Partners 2025, Professional Negligence)
- *"James is very knowledgeable and provides detailed, helpful advice. He is clear when setting and managing expectations, and his advocacy is focused on the important points. Clients trust his advice."* (Chambers and Partners 2025, Professional Negligence)
- *"He's top class. He's really intellectual but wears it lightly and is good at explaining things in simple ways."* (Chambers and Partners 2025, Professional Negligence)

- *"James is top class – commercial, approachable and knowledgeable – and is to my mind one of the best senior juniors in this area."* (The Legal 500)
- *"James shows a great level of attention to detail, is user-friendly, good in front of clients and commercially aware."* (Chambers and Partners 2024)
- *"Very commercial and pragmatic. James has incredible understanding of a very complex matter."* (Chambers and Partners 2024)
- *"James is excellent at analysis, advice and drafting. Whilst being technically excellent, he retains a commercial perspective."* (Chambers and Partners 2024)
- *"He is a cracking chap, incredibly competent, and great with clients because he builds a brilliant rapport."* (Chambers and Partners 2024)
- *"James is my go-to barrister for professional negligence, as he's a real team player, and an excellent advocate."* (Chambers UK, 2023)
- *"He's thorough and practical and his written work is really good."* (Chambers UK, 2023)
- *"Good attention to detail, very good drafting skills and good with clients."* (Chambers UK, 2023)
- *"An expert in professional negligence. He has a great manner with clients and really delves into the matter to scrutinise the evidence. A robust advocate."* (The Legal 500, 2023)
- "*His greatest strength is his ability to see the bigger commercial picture and not get lost in the legal merits. This is what is important to clients. In real terms that means getting results early on in the litigation."* (The Legal 500)
- *"Very pragmatic and excellent in discussions with clients."* (Chambers UK)
- *"He is a very personable lawyer – almost like an outsourced member of our team. Because of his law firm background, he understands exactly how clients like his advice to look. He's very adept at striking a balance between detail and practicality."* (Chambers UK)
- *"He is very thorough, articulate and great with clients. He challenges the clients in a sympathetic way to draw out necessary information. His advice is clear and very detailed."* (Chambers UK)
- *"He is a rare breed in terms of being able to distil document-heavy material into detailed advice. Very practical."* (Chambers UK)
- *"He provides excellent advice and is an extremely successful advocate. His previous in-house experience is valued for its commerciality. He is extremely thorough and bright while being very easy to work with and client-friendly"* (Chambers UK)
- '*He is commercially astute and technically very gifted.*' (The Legal 500)
- '*He is able to take in immense amounts of detail, distil that knowledge and then summarise it in a way which is easily accessible.*' (The Legal 500)
- *"Technically excellent, responsive, client-friendly and commercially minded" (The* Legal 500)
- *"Especially strong on claims relating to tax mitigation schemes" (*Chambers UK)

Publications

- *The risks of attempting to rectify mistakes in security documents, without seeking a court order* – published in the Journal of International Banking and Financial Law, October 2023.
- *Construction Professional Indemnity Insurance* (Sweet and Maxwell, 2018): chapter on ascertainment of liability.
- *Lender Claims* (Edited by Tomlinson KC and Grant, Sweet and Maxwell, July 2010) – Contributions in relation to subjects including equitable securities over land.
- *Breach of Trust – the strongest of all Lender Claims*? has been published in both the Journal of Professional Negligence (2012- Vol 28 no. 2) and *Trust Law International* (2012- Vol 26 no.4).
- *Insurance Broking Practice and the Law, Informa* – Contributor

Insights

26/10/2026 Gatehouse Chambers welcomes property and chancery barrister William Richardson
21/10/2026 Established Practitioners
15/10/2026 Chambers UK Bar Guide 2027
01/10/2026 The Legal 500 UK Bar Guide 2027
31/07/2026 'Risk and Negligence in Property Transactions' – 2nd Edition, edited by John de Waal KC
08/07/2026 AI Hallucinations and Professional Liability: Further lessons, this time from UK v Secretary of State for the Home Department [2026] UKUT 81 (IAC)
12/06/2026 Gatehouse Chambers shortlisted in 8 categories at the Legal 500 Bar Awards 2026

Upcoming events

12/11/2026 Professional Liability Conference 2026

Past events

02/04/2026 Mazur – shall we just forget this ever happened?
06/11/2025 Professional Liability Conference 2025
21/11/2024 Professional Liability Conference 2024
24/06/2024 Gatehouse Chambers Brew: Professional negligence – in case you missed it!
15/04/2024 A glitch in the matrix: will the law on mistake evolve to meet the AI challenge?
09/11/2023 Professional Liability Conference 2023
05/12/2019 Professional Indemnity Insurance: Recent Developments
12/02/2019 A changing landscape: the impact of changes in the FOS jurisdiction on FS and professional negligence claims
07/02/2019 James Hall speaking at Financial Services Regulation & Disputes Summit 2019

Related newsletters

16/03/2021 Focus On...Professional Liability
08/10/2018 Property Newsletter: October 2018

GATEHOUSE CHAMBERS

Limitation: the age-old question; recent cases on s14A and s32 LA 1980

James Hall, Gatehouse Chambers

November 2026

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This session will cover:

- An overview of s14A; and three recent cases
- An overview of s32; and four recent cases
- Drawing the threads together



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Section 14A Limitation Act 1980

The alternative to 'primary' limitation

- Effect – alternative three year period from date of knowledge
- *'Negligence actions'* (***Laws v Lloyds*** [2003] EWCA Civ 1887; ***Shokrollah-Babaee v EFG Private Bank Ltd*** [2023] EWHC 3270 (Ch))
- *'Knowledge'* (***Haward v Fawcetts*** [2006] UKHL 9)
- *'Damage'; 'Attributability';* Identity of Defendant
- Section 14A(10) – 'constructive' knowledge; the proviso (***Williams v Lishman and others*** [2010] EWCA Civ 418, ***Barker v Baxendale Walker Solicitors*** [2016] EWHC 664 (Ch), ***Gosden v Halliwell Landau*** [2020] EWCA Civ 42)
- **Burdens of proof** (***Haward***; ***Skipton BS v Sorsky*** [2003] EWHC 930 (QB))

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Recent s14A cases

- ***Kay v Martineau Johnson*** [2026] EWCA Civ 224
- ***Gomes v AMG Financial Management*** [2026] EWHC 2284 (Comm)
- ***Three R Tourism and Hospitality Ltd v Orrick, Herrington & Sutcliffe (UK) LLP*** [2026] EWHC 1844 (KB)

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Kay v Martineau Johnson [2026] EWCA Civ 224

- Claim against solicitors relating to alleged negligent advice on financial provision in divorce in 2008. Claim issued in 2023 (before s14B longstop)
- Court of Appeal dismissed C's appeal relating to s14A Limitation Act 1980 on the facts, but accepted that in 'rare' cases the impecuniosity of a claimant could be relevant to whether they had taken 'all reasonable steps to obtain expert advice' under s14A(10)(the proviso re: constructive knowledge)
- First time acknowledged in relation to s14A in a reported case
- In any case where a professional advisor's negligence leads to outright impecuniosity, time *may* not start running until the claimant can afford to take independent advice

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Gomes v AMG Financial Management [2026] EWHC 2284 (Comm)

- Claim against financial advisers and a solicitor (Mr Mandelli) in relation to a loan to a property developer
- Solicitor an employee of financial adviser and denied owing duty of care to C; and asserted claim was time-barred
- Strike out/reverse summ judg application. Judge agreed no duty owed
- On s14A, C said 'fact sensitive' re: when they knew about the full extent of Mr Mandelli's role; but they knew Mandelli involved, and how could there be contemporaneous dealings amounting to an assumption of responsibility to a claimant but which could be unknown to the claimant?
- Section 32 also relied on but hopeless – no pleaded case or evidence

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Three R Tourism and Hospitality Ltd v Orrick, Herrington & Sutcliffe (UK) LLP [2026] EWHC 1844

- Claim by shareholder in online travel business against solicitors advising on restructuring in 2018. January 2020 investor forced C to transfer its shares and be left with debts. Claim form issued 2025 (in interim, seven month standstill). C argued had s14A knowledge in Sept 2022
- Where the essence of negligence was the giving of wrong advice, time would not start to run under s.14A until a claimant had some reason to consider that the advice might have been wrong (***Witcomb v Keith Park Solicitors*** [2023] EWCA Civ 326)
- Any reasonable person left with no shareholding and substantial debts who did not understand how that had occurred would have investigated, which would lead to seeking advice on the advice received from D. Evidential lacuna: C had not explained what prompted them to instruct Nigerian lawyers in 2022, what had changed in their knowledge between January 2020 and September 2022, or any other event that might have explained why a reasonable person would not have investigated as at January 2020. That was when they acquired constructive knowledge

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Section 32 Limitation Act 1980

POSTPONED

- Effect – postpones start of any limitation period

- *'Fraud'* (must be an essential element of the case - ***Morjaria v Mirza*** [2025] EWHC 1961)
- *'Deliberate concealment'* (***Canada Square Operations v Potter*** [2023] UKSC 41)

- *'Discovered'* or *'Could with reasonable diligence have discovered'*
- Acts or omissions of an agent are not to be attributed to the claimant (***Peco Arts v Hazlitt Gallery*** [1983] 1 WLR 1315; ***Allison v Horner*** [2014] EWCA Civ 117)
- Characteristics of the claimant relevant? ***Allianz v RSA*** [2021] EWHC 2950 (Ch)
- *'Statement of claim'* and *'worthwhile claim'* tests
- **Burden of proof on C** (***Paragon Finance v Thakerar*** [1999] 1 ALL ER 400)

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Recent s32 cases

- ***DLA Piper UK LLP v Henshaws Farming LLP*** [2025] Ch 542 (Ch)
- ***Super Fast Trading Limited v Bank of Ireland*** [2025] EWHC 871 (Comm)
- ***White v Uber London Ltd*** [2026] EWHC 2651 (Comm)
- ***Baroness Lawrence & Ors v Associated Newspapers Ltd*** [2026] EWHC 1637 (KB)

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DLA Piper UK LLP v Henshaws Farming LLP [2025] Ch 542 (Ch)

- Claimants were former solicitors and assignees of trustees who had a claim against multiple defendants for unlawful means conspiracy and procuring breach of contract re: transfer of property to avoid overage provision
- Claimants relied on s32 re: concealment of transfer
- Mere registration of the transfer did not amount to disclosure
- Reference in s32(1) to "the plaintiff" refers to the person in whom the cause of action is vested from time to time; so, the trustees until the assignment and then C
- Strike out/reverse summ judgment dismissed – all v. fact sensitive

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Super Fast Trading Limited v Bank of Ireland [2025] EWHC 871 (Comm)

- Fraudulent misrep claim against bank re loan in 2009; claim issued 2023
- Reverse summ judge application. C argued discovery of fraud in 2017
- When a trigger to exercise reasonable diligence occurs is fact-specific. Trigger is not necessarily a single event
- The first stage test is "*whether there is anything to put the claimant on notice of a need to investigate*" i.e. "*something which would have caused a reasonably attentive and diligent person to ask questions*"
- 2nd stage - what would have emerged on investigating, following being put on notice
- If legal advice taken doesn't suggest further investigations, may not need to go further
- Not fanciful that C could not have (diligently) discovered the fraud before 2017

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White v Uber London Ltd [2026] EWHC 2651

- Unlawful means conspiracy claim by over 13,000 black cab drivers
- Alleged dishonest representations between 2012 and 2018 made by Uber to TfL re: booking process, to obtain and retain private hire licence
- 2017 TfL finds Uber gave misleading information
- Claims issued May/June 2024 just after primary limitation
- Cs said s31(1) discovery occurred in June 2018 (Mag's Court case re: Uber)
- Court found TfL decision letter in June 2017 was sufficient for statement of claim test – could properly infer dishonesty from that letter and the Mags case had not taken the matter materially further
- Could have pleaded claims without risk of strike-out by end 2017/early 2018

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Baroness Lawrence & Ors v Associated Newspapers Ltd [2026] EWHC 1637 (KB)

- Failed claim against Daily Mail/Mail on Sunday re: phone hacking
- Cs relied on deliberate concealment. Judge made findings where appropriate
- For Sir Simon Hughes and Ms Frost-Law, actual, alternatively constructive knowledge acquired April 2016 as a result of acquiring and discussing incriminating emails; claim issued October 2022 ([1505] to [1536])
- The 'Limitation Camouflage Schemes': proven in relation to Sir Simon Hughes, not proven in relation to Ms Frost-Law, but not of that much consequence; post-dated knowledge being acquired anyway in April 2016 ([1537] to [1570])
- The 'Leveson Lies': not pursued in a clear way, not proven and in any event not determinative ([1574] to [1604])

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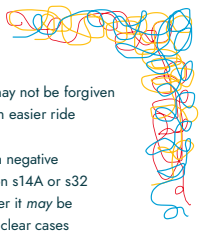
GATEHOUSE CHAMBERS

Drawing the threads together



1. Claimants may often seek refuge in s14A or s32
2. Wealthy/well resourced/sophisticated claimants may not be forgiven
3. The poorer/less sophisticated claimant will have an easier ride
4. Going to see an expert early helps
5. The burden of proof and the difficulty of proving a negative
6. The longer the delay, the harder it will be to rely on s14A or s32
7. The more technical the underlying issues, the easier it *may* be
8. (Reverse) Summary judgment will only succeed in clear cases

14

GATEHOUSE CHAMBERS

Thank you!

Any questions?

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Helen Ager
Kennedys

"The Defendant Perspective"



Kennedys

Helen Ager

Partner | Bristol

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Helen is a partner in Bristol and is a professional liability specialist.

With significant experience acting for professionals and their insurers, Helen predominantly deals with claims against solicitors, accountants and other professionals in both traditional lines of work and emerging, non-traditional areas.

In addition to advising insurers on policies relating to these types of claims, she has also represented a variety of professionals and businesses, consultants, agents, brokers and manufacturing or service businesses facing claims under their professional indemnity, directors' and officers' (D&O) or corporate legal liability insurance policies.

Helen is an accredited mediator and uses mediation, or other forms of alternative dispute resolution (ADR) to resolve disputes as effectively as possible.

"Helen Ager is very good at resolving things in a simple way as she sees the commercial reality and gets things done efficiently." Chambers UK 2026



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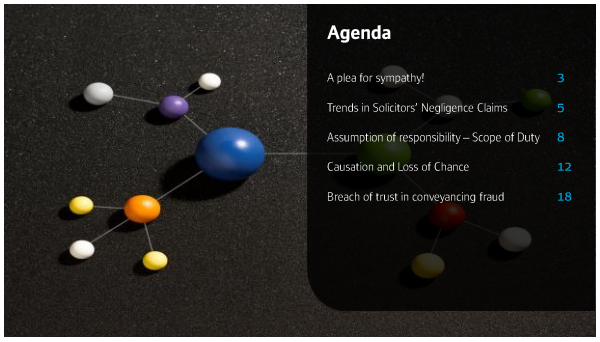

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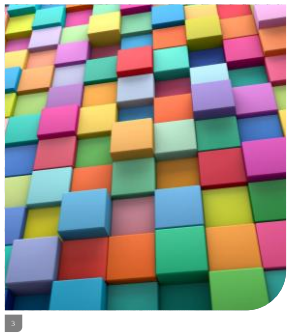


A plea for sympathy!

3

A plea for sympathy!

- Are the Defendants and their lawyers the "Bad Guys/People"?
- I hope that you all disagree. Self interest, Justice and Balance
- Stand in the shoes of the Defendants
- Genuinely Constructive Approaches – Win Win

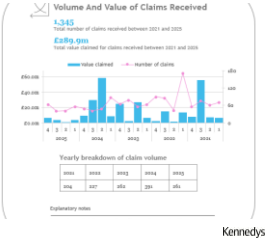


Trends in Solicitors' Negligence Claims

Trends in solicitors claims

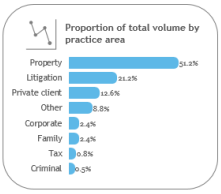
Volume of claims





Cause of claims and practice area





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Assumption of responsibility – Scope of duty

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 is there is no retainer?

Kennedys

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.

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.



Causation and Loss of chance

Causation – "But for"

Much misunderstood

- Barnett v Chelsea and Kensington Hospital Management Committee [1969] 1 QB 428.
- Arsenic poisoning but would he have died "but for" the negligent failure to examine him.
- Allied Maples Group Ltd v Simmons & Simmons [1995] 1 WLR 1602
- A breach will only cause loss if loss was caused by the breach. How is that evidenced? Direct evidence can be used but that is difficult particularly where there are hypothetical outcomes depending upon the acts of third parties

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Principles of "loss of chance"

- Things Claimant would have done are assessed "yes" or "no" on the balance of probability
- Things other parties 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 Joint Venture 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% x 80% = 32% loss of chance

- Damages: £1.2 million x 32% = £389,330 (only 18% of claim)

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) x 92% = £6.9m.
  - Apply discount first: (10m x 92%) - £2.5m = £6.7m
  - The £200,000 difference = 8%



Breach of trust in conveyancing fraud

"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.

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?

Tactics

Please can we all agree.....

- Reasonable timetabling and extensions
- To share the appropriate documents early
- To explain causation to claimants
- Negotiations and offers should be sensible and professional
- To stop thinking that Defendants are conniving and evil!
- Let's do sensible work together



Questions

Thank you

Key contacts



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Andrew Burnette
Burges Salmon

"10 Things I Hate About You"

Andrew Burnette

Partner

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Andrew heads the firm's Dispute Resolution department. He is a highly experienced commercial litigator with top-band ranking in the leading independent directories. Legal 500, 2025 says "He is a highly intelligent, focused and commercially-minded partner, who seeks to provide an excellent service to clients. He knows everything there is to know about professional negligence claims, and commercial litigation generally."

He specialises in high value, complex or portfolios of professional negligence claims, particularly against solicitors, surveyors/valuers, financial advisors and brokers, actuaries, auditors and accountants. He is particularly well-known for his work on behalf of traditional and specialist lenders in this field. His team is "an extremely formidable force on the claimant-side of professional negligence claims…providing city law firm quality out of London" (Legal 500, 2025).

Andrew is a regular speaker and commentator on professional negligence matters, with a keen interest in how liability for the deployment of AI and technology in professional services will evolve.

His practice also includes civil fraud, company and shareholder disputes, contractual disputes across a wide variety of subjects and sectors, urgent injunctive relief to protect his clients' commercial interests, and product liability.
Andrew is a member of the Professional Negligence Lawyers' Association and the International Bar Association.

Experience

- Surveyor negligence: Acting for a specialist lender regarding the negligent over-valuation of a shopping centre as security for a £17.75 million loan.
- Solicitor negligence: Advising a national retailer on claims against an international law firm arising from disclosure failings.
- Financial adviser: Defending a financial adviser against claims of fraudulent misrepresentation, conspiracy and COBS breaches by former clients.
- URE Energy: Successful Commercial Court proceedings against Notting Hill Genesis following the termination of a novel energy supply arrangement.

"10 Things I Hate About You“

PNLA Conference, Bristol

Andrew Burnette
Burges Salmon LLP
19 November 2026

1

The 10 Things…

- **Why won’t anyone talk to me anymore?**
- **Not all claims are a try-on!**
- **Is mediation still fit for purpose?**
- **Pre-action Protocol: purpose or pretence?**
- **Pre-action disclosure: the farce.**
- **Cost budgeting is increasing costs.**
- **Contributory Negligence in the real world.**
- **Part 18 Wars.**
- **Standstill v Limitation.**
- **Is Adjudication a credible alternative when no-one will do it?**

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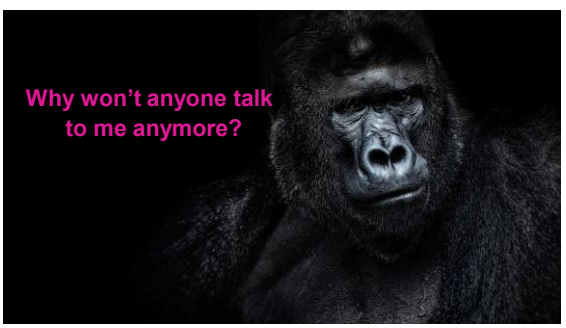

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Is mediation still fit for purpose?

- Are we mediating for the right reasons?
- Are we mediating at the right time?
- Are we forgetting the real purpose of a position statement?
- Are lawyers interfering too much with what is supposed to be a commercial negotiation between the parties?
- Are parties always coming with appropriate authority?
- Are we being realistic with parties in advance about what the parameters of a negotiated settlement are likely to be?
- Same old, same old…
- Alternatives?

6

Pre-Action: purpose or pretence?



Aims of the Protocol

2.2 The aims of the protocol are to enable parties to prospective claims to:

(a) understand and properly identify the issues in dispute in the proposed claim and share information and relevant documents;

(b) make informed decisions as to whether and how to proceed;

(c) try to settle the dispute without proceedings or reduce the issues in dispute;

(d) avoid unnecessary expense and keep down the costs of resolving the dispute; and

(e) support the efficient management of proceedings where court proceedings cannot be avoided.

Pre-action Disclosure: a modern day farce



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Cost budgeting is increasing costs….



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Contributory Negligence in the Real World



11

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Part 18 Wars



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Standstill v Limitation



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Notes: -

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Jamie Molloy
Ignite Specialty Risk

"Litigation funding"

IGNITE

Jamie Molloy

Head of ATE and Co-founder
jamie.molloy@ignitespecialty.com



Jamie has worked in the ATE market for the past 18 years and is a Chambers and Partners ranked individual.

His experience includes underwriting and managing a significant volume of High Court and Competition Appeal Tribunal (CAT) disputes, as well as supporting a number of successful appeals to both the Court of Appeal and Supreme Court.

Most recently, Jamie supported the leading authority on the use of single claim forms for group actions *(Morris & Ors v. Williams & Co (Solicitors) [2024] EWCA Civ 376)* and also one of the claimants in the leading BII Test Litigation (*Why Not Bar and Lounge Limited v West Bay Insurance plc & QIC Europe Limited [2024] EWCA Civ 1026)*.

Jamie also sits as a member of the consultation group on the Civil Justice Council review of litigation funding.

IGNITE
Specialty Risk

Litigation Funding Update

Jamie Molloy – Head of ATE & Co Founder
Professional Negligence Lawyers Association – Bristol
November 2026

1

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- Litigation Insurance Provider with offerings across UK,US, Europe and Australia
- Chambers and Partners and Legal 500 Ranked
- Consulting party for Civil Justice Council Review into the Regulation of Litigation Funding
- Employs in house lawyers, formerly of RPC, Latham & Watkins, DLA Piper, Mayer Brown and Winston & Strawn

Chambers Litigation Support 2025

2025 PERSONAL INJURY AWARDS WINNER

2

Talk Summary

- PACCAR – Up to Date Position
- White v Uber – Privilege, Funders and Limitation
- Angel v Black Horse – Omnibus Claim Forms
- Opt-Out Reform – DBT Consultation and Law Commission
- Bolt-On: Security for Costs – Lloyds v Accor



3


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PACCAR to be overturned and no maximum cap placed on funder returns
CFA and DBA legislative regimes to be replaced by single regime
Light touch regulation for Commercial Funding
Civil Justice Council Recommendations
CFA uplifts and ATE premiums remain non recoverable
FCA regulation for Consumer Funding
Recoverable Funding Costs permitted in very exceptional circumstances

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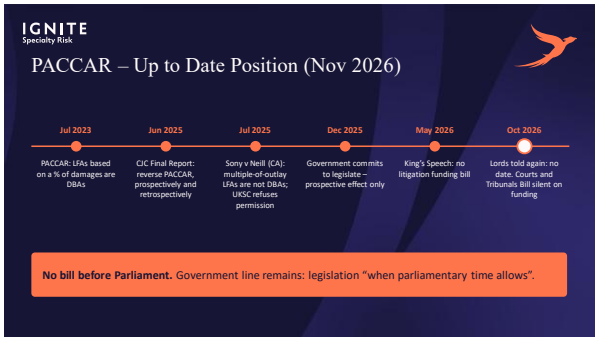
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PACCAR – Up to Date Position (Nov 2026)
Jul 2023
PACCAR: LFAs based on a % of damages are DBAs
Jun 2025
CJC Final Report: reverse PACCAR, prospectively and retrospectively
Jul 2025
Sony v Neill (CA): multiple-of-outlay LFAs are not DBAs; UKSC refuses permission
Dec 2025
Government commits to legislate – prospective effect only
May 2026
King's Speech: no litigation funding bill
Oct 2026
Lords told again: no date. Courts and Tribunals Bill silent on funding
No bill before Parliament. Government line remains: legislation "when parliamentary time allows".

5


PACCAR – What It Means in Practice
PACCAR remains the law – more than three years on, s.58AA CLSA 1990 is unamended
Multiple-of-outlay Funding Agreements are safe following Sony v Neill [2025] EWCA Civ 841
Percentage-of-damages Funding Agreements remain exposed
The promised fix is prospective only – historic agreements are not rescued
Expect enforceability points at settlement, costs and security for costs stages
Watch: DBT now proposes allowing DBAs in CAT opt-out claims (see Part 4)

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White v Uber – The Background

c.13,300 black cab drivers v Uber – unlawful means conspiracy. Claims issued 2024, out of time unless s.32 Limitation Act 1980 applies. Funder-led origination via Harbour and Mishcon de Reya.



7

White v Uber – Privilege Ruling (June 2026)

- Uber sought pre-October 2018 communications between Mishcon, Harbour and the LTDA – relevant to s.32 knowledge
- Mishcon ↔ Harbour: legal advice privilege (Harbour was the client) – reviewed document by document
- Mishcon ↔ LTDA and drivers: only litigation privilege could protect them – and it failed
- Control: material from the funder retainer held to be within the claimants' control
- Uber London Ltd v White [2026] EWHC 1610 (Comm), Birt J

The key distinction: a funder deciding whether to fund is not conducting litigation – dominant purpose test not met

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White v Uber – Limitation Sequel (Oct 2026)

- Preliminary issue: could the claimants, with reasonable diligence, have discovered the fraud before 25/26 June 2018?
- Held: the TfL decision letter (public 20 December 2017) gave enough to plead – claims time-barred
- Disclosed funder-stage material shows the claim being worked up and pitched before the claimants' chosen date
- Harbour refused to waive its privilege – the burden under s.32 stayed with the claimants
- White v Uber London Ltd [2026] EWHC 2651 (Comm)

13,300

claimants – entire claim falls with the preliminary issue

4½ years

between the funder walking away and the claimants next writing to Uber

9

White v Uber – Lessons for Practitioners

1 Don't assume privilege
Funder-stage work and contact with third parties may be disclosable

2 Structure the retainer
Who is the client, and when does litigation privilege actually start?

3 Keep early contact tight
Trade bodies and prospective claimants: minimal, purposeful, documented

4 Proposals are evidence
Funding and ATE proposals can show what your client knew, and when

5 Insurer-led origination
The same argument is likely where an insurer or funder is the client

6 Mind the gap
If a funder pulls out, diarise limitation and act – a negligence risk in itself

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Angel v Black Horse – Omnibus (Group) Claim Forms

5,800+	8	c.£1,000
claimants	omnibus claim forms – one per lender	typical value per claim

- Black Horse Ltd v Angel [2026] EWCA Civ 831 – lenders' appeal dismissed (30 June 2026)
- CPR 7.3: one claim form for volume of claims that can be "conveniently disposed of in the same proceedings"
- Coulson LJ: is it a convenient way to dispose of the claims – not the most convenient way
- No need for a GLO; generic pleadings and lead cases are permissible
- But "very much a decision on its own facts" – each claimant still proves unfairness individually

11

Angel v Black Horse – What Next?

- Supreme Court next: Black Horse and Close Brothers are taking it to the Supreme Court
- CPR Committee review of CPR 7.3 is "back on the radar"
- Professional negligence relevance: Morris v Williams & Co [2024] EWCA Civ 376 was itself a claim against solicitors
- Economics: lower issue fees, single disclosure exercise, funder and ATE-friendly
- Meanwhile the CA decision stands – omnibus claims continue to be issued

But still opt-in: every claimant has to be found and signed up – which is where opt-out reform comes in

12

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Opt-Out Reform – DBT Consultation (CAT)

- "Swifter and Simpler" consultation: 17 July – 25 September 2026; response awaited
- Scope unchanged for now: opt-out stays limited to competition claims
- Tougher certification: merits in absolute terms, more weight on cost-benefit, evidence for aggregate damages
- Funding: lift the DBA ban in opt-out claims; CAT to indicate whether the funder's return is reasonable at certification
- Presumption that funders are paid on award or settlement, before distribution
- Also: CMA redress schemes, leniency immunity, CAT fees

Gutmann v SSWT

£216k

went to the class

£10m+

went to other stakeholders

13

Opt-Out Reform – A Consumer Class Action?

- Law Commission project announced 20 April 2026, at the Government's request
- Scoping questionnaire closed 30 October 2026; consultation paper to follow
- Key questions: what is a "consumer law claim"? Opt-in, opt-out or both? Certification, settlement, distribution, funding
- Must take account of the DBT review's conclusions

For PNLA members

- Could consumer claims against professionals fall within scope?
- Angel shows the demand – opt-out would remove the sign-up barrier
- What role for ATE and funding in an opt-out world?

14

Security for Costs Bolt-On

- **Lloyds Developments v Accor** [2025] EWHC 1238 (TCC) – ATE with an anti-avoidance endorsement can in principle replace a payment into court, but the wording is scrutinised: termination, notice, fraud
- Defendants must flag objections early so defects can be cured – not hold them back for the hearing
- **Follow-up** [2025] EWHC 2011 (TCC) – AAE must respond irrespective of fraud "by any person"
- Approved wording: non-voidable and non-cancellable, paid direct to the defendant, directly enforceable, survives insolvency
- **Since then:** Contis v Swipewallet [2025] EWHC 3065 (Comm) – ATE accepted, plus £300k top-up for termination risk

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Questions?

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Sam Morley RIBA
Hawkins

"The Forensic Architects Perspective"



Hawkins
Leaders in forensic investigation

SAMUEL MORLEY

Architect
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Samuel graduated from the University of Bath in 2003 with a Masters in Architecture having previously graduated in 2001 with a BSc in General Architectural Studies from the same university. During his studies Samuel benefited from the unique interdisciplinary studio teaching with both architecture and engineering students contributing towards projects; preparing him for collaboration in professional life.

Upon graduation Samuel worked initially in facilities management for University College London Hospitals on a project to document and assess their existing estate providing data to enable informed property decisions.

In 2004 Samuel transitioned to private practice in an architectural role at Thomas Nugent Architects whilst he completed his PgDip in Professional Practice in Architecture at University of Westminster; achieving Chartered status in 2007. During his time Samuel led a variety of commercial and domestic projects ranging from new build houses to hotel, office and residential developments.

In 2008 Samuel moved to Mace to become part of their multi-disciplinary design team where he led public sectors projects including children's centres, libraries and schools. During this period Samuel was seconded for 3 years to Hampshire County Council to lead their nursing care programme, whilst also working on education and other civic projects, as part of their in-house design team working across all RIBA stages in a lead designer and contract administrator role.

In 2015 Samuel returned to private sector projects with a move to Geraghty Taylor where he held the role of associate and sat on the operations board with a remit covering contractual matters alongside resourcing and staff management activities. Samuel was predominately involved in leading large new build residential schemes at planning application and delivery stage. This was interspersed with commercial fit-out, healthcare and technology projects.

After carrying out the Contract Administrator role and becoming interested in design responsibility across the project team, Samuel decided to pursue the MSc in Construction Law and Dispute Resolution at Kings College London, achieving a merit in 2019. His dissertation focused on the impartiality of Contract Administrators and the challenges of the role.

An eagerness to promote best practice and help nurture the next generation led Samuel to become a Part 3 examiner at the University of Westminster in 2016 and then in 2018 at the Architectural Association, where he has subsequently became involved in writing the Part 3 exam and tutoring in professional practice at Part 1.

The Forensic Architect's Perspective

Sam Morley
BSc(Hons) MArch MSc PgDip MCIArb RIBA

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Leaders in forensic investigation

1

Sam Morley

- Over 15 years leading projects across the public and private sectors
- Previously RIBA Part 3 Examiner & ARB Inquirer
- MSc Construction Law & Dispute Resolution (KCL)
- Member of the Chartered Institute of Arbitrators
- Civil Cardiff University Bond Solon Expert Witness
- IRATA Level 1 Rope Access Technician
- IICRC Water Damage Restoration Technician
- PCA Certificated Surveyor of Damp in Buildings



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Residential







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Commercial





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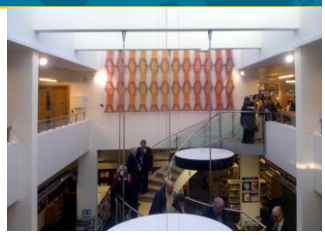
Public Sector





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Learning Objectives

- What is forensic architecture?
- What are the Building Regulations?
- The architect's role and what is reasonable?
- Case studies relating to fire safety and water ingress

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Forensic Investigation??

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Forensic Investigation??



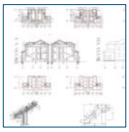
Fire Safety



Damp



Personal Injury



Architect PI

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Forensic Investigation??

Cases Types

1. Root cause
2. Root cause known. Any non-compliance with Building Regulations, contract or other relevant standards
3. Professional Negligence – design, inspection, contract administration
4. Latent Defects Claims – assessing coverage
5. Private Clients – Construction Problem

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Forensic Investigation??

- Initially instructed by Loss Adjusters on behalf of Insurers
- Employed to find out what went wrong.
- Were there any breaches of policy conditions?
- Any chance of recovery? – Subrogation
- Did incident occur due to any non-compliances with standards or regulations?
- Possibly advise on remedial work
- If recovery or possible coverage dispute, then instruction moves to Solicitors
- Assist Solicitors in conference with Counsel to assess whether claim will proceed
- Prepare expert reports for court – CPR 35
- Meetings with other experts
- Court testimony

Forensic Investigation??



Forensic Investigation??

Fire Investigator	Forensic Fire Engineer	Forensic Architect
What is the damage?	Was the damage caused by a construction defect?	Is there a design defect?
What is the cause?	What is the construction defect?	What was the design scope?
Is there any potential recovery?	Did the building comply with Building Regulations?	Were there any inspection duties?
Policy coverage?	Is there any potential recovery?	Were any certificates signed?
		Was the architect lead designer?
		Did the architect exercise reasonable skill and care?

Forensic Investigation??



Public

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Forensic Investigation??

Witness Information	Site Inspection	Document Review
Occupiers	Root cause	Scopes
Owners	Do the drawings match what has been built?	As-built design information
Contractors	Opening-Up	Instructions
Consultants	Retain exhibits	Building Control records
	Site testing	Site Inspection records
	Laboratory testing	Relevant regulations & standards
		Product Information
Hear	**See**	**Read**

Public

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Building Regulations

Building Act 1984 (as amended)

↓

Building Regulations 2010 (as amended)
Regulations + Requirements

↓

Approved Documents

Public

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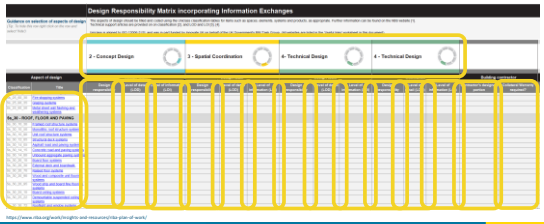
What is Reasonable?

16

What is Reasonable?

Appointment – Scope and Design Responsibility Matrix



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What is Reasonable?

Workmanship?

Designer (Inspection)?

Lead Designer (Co-ordination)

Contract Administrator (Certification)?



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What is Reasonable?

Architect's Job Book

"Having an audit trail showing that the member took account of the practices contained in the RIBA Job Book, may provide a partial defence to an allegation of negligence. When seeking an independent expert report to defend such a case, the expert may reference the RIBA Job Book as a measure of reasonable skill and care."

Riva Properties v Foster and Partners 2017 EWHC 2574 TCC

"There are many references in the RIBA Job Book to cost being a key constraint that must be identified and considered at Stage A and B. In my judgment the exercise of reasonable skill and care requires an architect to have regard to the RIBA Job Book. Mr Rich also stated that the importance of adhering to the RIBA Work Stage progression and "getting such matters right at the outset" is amplified on a project such as this where "a client can find itself incurring high fees by the end of Stages C and D to produce a design that has failed to take into account of such basic constraints as budget". This is, in my judgment, also entirely supported by common sense."

What is Reasonable?

Legislation – Secondary – Building Regulations, CDM Regulations etc

Approved Documents
HSE Approved Codes of Practice

Other Guidance from RIBA
British Standards
Other trade and professional organisations

Use of AI as a Forensic Architect

Hawkins AI Policy

Hawkins forensic investigators are permitted to use AI to **assist** with:

- Research and information gathering
- Proof reading and summarising documents
- Data analysis
- Creation of presentations
- Administrative tasks and automation

But the forensic investigator must always remain responsible for the work they produce.

AI must NOT be used to determine cause, assign liability, reach expert conclusions, replace forensic analysis or make decisions on behalf of Hawkins or its clients.

Fire Spread – Residential

Hawkins

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Fire Spread



Hawkins

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Fire Spread





Hawkins

24

Fire Spread





Fire Spread





Fire Spread





Fire Spread





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Fire Spread





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Fire Spread





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Roof Leak

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Roof Leak





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Roof Leak





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Roof Leak





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Wind Damage

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Wind Damage





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Wind Damage





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Any Questions?

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Nicole Hilton
St Johns Chambers

"What's New in Negligence? - A Professional Negligence Update"

BARRISTER PROFILE



Nicole Hilton

Barrister

Call: 2021 **Inn:** Lincoln's Inn

OVERVIEW

Nicole is a barrister and trained mediator with a broad practice encompassing many areas of commercial and chancery law.

Nicole accepts instructions in commercial, construction, professional negligence, landlord and tenant, commercial and residential property, other property and real estate and wills, trusts, and probate disputes. She has experience in many aspects of litigation including interim applications, possession hearings, Part 8 proceedings, and fast track, intermediate track, and multi-track matters.

A thorough, analytical, and detail-oriented professional, Nicole is able to address complex legal questions and present persuasive arguments built upon her excellent problem-solving abilities. Nicole takes a meticulous approach to her cases, which assists in her navigation of difficult legal questions.

Prior to her career at the Bar, Nicole worked in mortgage enforcement and as a paralegal on the COVID-19 public inquiry and recently completed a commercial law LLM, focusing her dissertation on multimodal transport and international contracts. Following the successful completion of pupillage, Nicole joined Chambers in October 2024. Nicole's pupillage was completed under the supervision of Charlie Newington-Bridges, Christopher Jones, James Pearce-Smith, and Annie Sampson.

Additional information:

Nicole is an avid skier and tennis player. She also enjoys playing the piano. When she is not picking up a racket, dreaming about the slopes, or playing her favourite piano piece, she is reading historical fiction.

PROFESSIONAL MEMBERSHIPS

- Chancery Bar Association
- Society of English & American Lawyers

QUALIFICATIONS

- LLB (Hons) Law, University of Bristol
- LLM Commercial Law, University of the West of England
- BPC, University of Law Bristol
- International Mediation Institute Qualified Mediator
- Western Conference Women´s Forum Essay Competition First Place
- Advocacy Scholarship, University of Law
- Dean's Award for Excellence, University of Law
- Sir Louis Gluckstein Advocacy Competition Finalist, Lincoln's Inn

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Profile generated 5 November 2026. The current profile is available at https://stjohnschambers.co.uk/barrister/nicole-hilton/

What's New in Negligence: A Professional Negligence Update

Nicole Hilton

Nicole accepts instructions in professional negligence, commercial, construction, landlord and tenant, commercial and residential property, other property and real estate and wills, trusts, and probate disputes. She has experience in many aspects of litigation including interim applications, Part 8 proceedings, and fast track, intermediate track, and multi-track matters. Nicole also has experience in the High Court.

1

Agenda

- *Gomes v AMG Financial Management* Ltd [2026] EWHC 2284 (Comm)
- *Camstar Herbs Ltd v Advisory Insurance Brokers Ltd (trading as Morgan Law Insurance Brokers)* [2026] EWHC 2649 (Comm)
- *Afan Valley Ltd v Lupton Fawcett LLP* [2026] EWCA Civ 2
- *Niprose Investments Ltd v Vincents Solicitors Ltd [2026] EWHC 2320 (Ch)*
- *PBF Investments Ltd v Ewan & Co LLP* [2026] EWHC 1008 (Ch)
- *MPP (Services) Ltd v Ratio Law Solicitors LLP* [2026] EWHC 2852 (Comm)
- *Siem and others v Womble Bond Dickinson (UK) LLP* [2026] EWHC 1168 (Ch)

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Gomes v AMG Financial Management Ltd [2026] EWHC 2284 (Comm)

- Claim against a consultant solicitor dismissed
- Assumption of responsibility:
  - Consultant solicitor: did communication or conduct "cross the line"
  - Indirect dealings: was any intermediary who did have dealings that "crossed the line" acting on behalf of the consultant?
  - Payment directly to consultant: does not necessarily "cross the line"



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Williams v Natural Life Health Foods Ltd [1998] 1 WLR 830

"The touchstone of liability is not the state of mind of the defendant. An objective test means that the primary focus must be on things said or done by the defendant or on his behalf in dealings with the plaintiff. Obviously, the impact of what a defendant says or does must be judged in the light of the relevant contextual scene. Subject to this qualification 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 […] In the present case a triangular position is under consideration: the prospective franchisees, the franchisor company, and the director. In such a case where the personal liability of the director is in question the internal arrangements between a director and his company cannot be the foundation of a director's personal liability in tort. The inquiry must be whether the director, or anybody on his behalf, conveyed directly or indirectly to the prospective franchisees that the director assumed personal responsibility towards the prospective franchisees".

(Lord Steyn at 835G-H)

4

Spire and *Miller*: 'reasonably incidental'

- *Spire Property Development & another v Withers LLP* [2022] EWCA Civ 970 [2023] 4 WLR 56
- *Miller v Irwin Mitchell LLP* [2024] EWCA Civ 53, [2024] 4 W.L.R. 27, [2024] 2 WLUK 5
- Duty to advise on matters 'reasonably incidental'?
- Difference between existence of a retainer vs no retainer

5

Camstar Herbs Ltd v Advisory Insurance Brokers Ltd (trading as Morgan Law Insurance Brokers) [2026] EWHC 2649 (Comm)

- Allegation of failure to arrange adequate insurance cover for ongoing payments due after a fire
- Issues of breach, causation and loss
- A broker must take reasonable steps to ensure that its client understands the basis on which the insurance offered is written (*JW Bollom v Byas Mosley & Co Ltd* [2000] Lloyds Rep IR 136)



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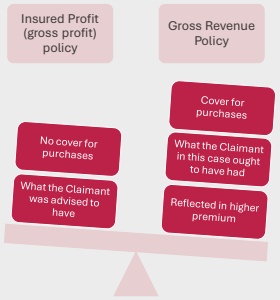

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Manchester Building Society v Grant Thornton UK LLP ('MBS') [2021] UKSC 20

"When a claimant seeks damages from a defendant in the tort of negligence, a series of questions arise:

(1) Is the harm (loss, injury and damage) which is the subject matter of the claim actionable in negligence? (the actionability question)

(2) What are the risks of harm to the claimant against which the law imposes on the defendant a duty to take care? (the scope of duty question)

(3) Did the defendant breach his or her duty by his or her act or omission? (the breach question)

(4) Is the loss for which the claimant seeks damages the consequence of the defendant's act or omission? (the factual causation question)

(5) Is there a sufficient nexus between a particular element of the harm for which the claimant seeks damages and the subject matter of the defendant's duty of care as analysed at stage 2 above? (the duty nexus question)

(6) Is a particular element of the harm for which the claimant seeks damages irrecoverable because it is too remote, or because there is a different effective cause (including novus actus interveniens) in relation to it or because the claimant has mitigated his or her loss or has failed to avoid loss which he or she could reasonably have been expected to avoid? (the legal responsibility question)."

Lord Hodge DPSC and Lord Sales JSC at [6]

8

Afan Valley Ltd v Lupton Fawcett LLP [2026] EWCA Civ 2

- Allegations as to failure to advise on the nature of schemes being collective investment schemes ('CIS')
- Section 19 Financial Services and Markets Act 2000: general prohibition unless authorised
  - Consequences under section 26
    - Unenforceability
    - Entitlement to recover money paid
    - Compensation
- Claimed for losses amounting to:
  - Investor funds raised and other losses
- £ for £ analysis
- Scope of duty question
- Sufficient nexus question



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South Australia Asset Management Corporation v York Montague Ltd [1997] AC 191 ("SAAMCO")

"A mountaineer about to undertake a difficult climb is concerned about the fitness of his knee. He goes to a doctor who negligently makes a superficial examination and pronounces the knee fit. The climber goes on the expedition, which he would not have undertaken if the doctor had told him the true state of his knee. He suffers an injury which is an entirely foreseeable consequence of mountaineering but has nothing to do with his knee. On the Court of Appeal's principle, the doctor is responsible for the injury suffered by the mountaineer because it is damage which would not have occurred if he had been given correct information about his knee. He would not have gone on the expedition and would have suffered no injury. On what I have suggested is the more usual principle, the doctor is not liable. The injury has not been caused by the doctor's bad advice because it would have occurred even if the advice had been correct."

(Lord Hoffmann at 213D-F)

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Niprose Investments Ltd v Vincents Solicitors Ltd [2026] EWHC 2320 (Ch)



- Report on Titles and conveyancing practice
- Sophisticated clients (*Carradine Properties Ltd v DJ Freeman & Co* [1999] Lloyd's Rep P.N. 48)
- Duty nexus question: potential results of a limited breach vs unrelated developer's insolvency

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Niprose Investments Ltd v Vincents Solicitors Ltd [2026] EWHC 2320 (Ch)

- Advice against entering into a transaction may be appropriate when:
  - Client proposing to enter into rash or unwise transaction (*Neushul v Mellish Harkavy* (1967) 111 Sol J. 399)
  - *County Personnel (Employment Agency) Ltd v Alan R Pulver & Co* [1987] 1 WLR 916:
    - A solicitor is expected to be alert to risks which might elude even an intelligent lay person; and
    - Is required to advise of such risks or explore the matter further
    - Need for a duty to advise against entering into a transaction and the required terms of such advice is extremely fact-sensitive

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Niprose Investments Ltd v Vincents Solicitors Ltd [2026] EWHC 2320 (Ch)

"Whilst it is obviously important that solicitors do their job properly because they fulfil a vital role in society, they are not nursemaids. They are not gatekeepers on commercial activity. It is unfair to treat them as such, absent exceptional facts. The reason it is unfair is because by such means one gets an unfair reallocation of risk and that is particularly pertinent in the context of an investment purchase, where risks are inevitable and they are the counterpart of reward and where we submit those risks were adequately understood, not least because of the advice given by my clients."

(Mr Simon Wilton KC for Defendant)

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PBF Investments Ltd v Ewan & Co LLP [2026] EWHC 1008 (Ch)

- Advice vs information
- Advice case
- Short judgment, no D participation, but still revealing
- Applied *Manchester Building Society v Grant Thornton UK LLP* [2021] UKSC 20



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MPP (Services) Ltd v Ratio Law Solicitors LLP [2026] EWHC 2852 (Comm)

Scope of duty, duty nexus, legal responsibility

- Risk of loss of opportunity to rely on legal charge to recover true extent of liability within the scope of the duty
- Sufficient nexus between loss of that opportunity and subject matter of Defendant's duty

Power of consistent evidence and statements made by solicitors in pre-action correspondence

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MPP (Services) Ltd v Ratio Law Solicitors LLP [2026] EWHC 2852 (Comm)

- Genuine loss of chance case
  - A chargor is entitled to challenge the amount secured by a charge
- Reflects a middle ground between a broad-brush approach and detailed assessment
  - Considered underlying prospects of claim between lender and borrower and the hypothetical counter-factual

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MPP (Services) Ltd v Ratio Law Solicitors LLP [2026] EWHC 2852 (Comm)

a
- Entirely or almost entirely speculative
- Disregarded

b
- Somewhere along a continuum between very weak to very strong
- Blended overall assessment expressed in money terms

c
- Entirely or almost entirely conclusive
- Extinguishes value of loss of chance

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Siem and others v Womble Bond Dickinson (UK) LLP [2026] EWHC 1168 (Ch)



- No breach of duty of care
- In any event, failure to prove factual causation
- Existence of implied retainer/assumption of responsibility

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St John's CHAMBERS

Thank you





Nicholas Lee
Managing Director
Paragon Costs Solutions

"Costs Update"



Nicholas Lee

Managing Director
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Paragon Costs Solutions

Nick began his career in costs in 2001. He qualified as an Associate of the Association of Law Costs Draftsmen in January 2009 and became a Fellow in January 2011. Following the Association being granted Reserved Legal activities under the Legal Services Act in 2007, he was admitted as a Costs Lawyer in 2011.

Nick worked in-house from 2001, initially attaining Associate status, and thereafter becoming Director of Costs and a fixed share partner for a Top 100 law firm.

In 2011, Nick created Paragon Costs Solutions which now has offices in London and Bristol. Clients have included many top 100 law firms, niche commercial practices, local authorities, insurers and international banks.

Advocacy, technical support, business development and client management are his primary responsibilities. Known for always being commercial and practical, colleagues and clients appreciate how thoroughly Nick assesses the merits in any claims, before giving his experienced and realistic advice.

Nick was President of Bristol Law Society (2018/19). He currently sits on the UWE Law advisory board, Bristol City Council's Economic advisory board, is an Enterprise Advisor through WECA and a Trustee for Quartet Community Foundation.

Nick is a frequent public speaker having arranged and spoken at numerous costs seminars. He is a member of Lexis PSL's Dispute Resolution Expert Panel. He has also written articles for numerous publications.

Reported Cases:
Bocacina Ltd v Boca Cafes Ltd [2014] EWHC 26 (IPEC)

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Costs Update
Nicholas Lee

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2025….

- Solicitor and client costs disputes.
- Misconduct and costs on the indemnity basis.
- Costs Management.

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Agenda

- Simplified Costs Management
- N260s in the Rolls Building
- Solicitor & Client Disputes
  - Terminating the retainer
  - Disclosure
  - Cash Account (Turner v Coupland)
- Mazur- what now?
- Interest on CFA funded cases

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"Simplified" Costs Management Pilots

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New Pilots

- There is one pilot for BPC in England and Wales (or Business & Property work in Manchester, Leeds or Central London). PD51ZG1
- There is a separate pilot for County Court claims in Manchester, Leeds, Central London and Bristol where the value of the claim is less than £1m. PD51ZG2
- Applies to cases issued on or after 6 April 2025.

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PD51ZG1 & PD51ZG2

- Claim value up to £1m
  - Costs budget (Precedent Z) due 21 days before the first CCMC.
  - Default position is a CMO will be made.
  - Budget discussion report (Precedent RZ) due 7 days prior to the CCMC.
  - Variations to budgets can be made using Precedent TZ.
  - Usual costs restrictions apply.

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Business & Property Courts of England & Wales (or Business & Property work Manchester, Leeds or London)

- Claim value £1m to £10m
  - Costs budget (Precedent Z) due 21 days before the first CCMC.
  - Default position is a CMO will not be made.
  - If the Court elects to make a CMO, the Court can direct budgeting under the simplified scheme or normal budgeting.
  - Where the relevant claim contains either no statement of value or seeks only non-monetary relief or the parties are unable to agree whether the claim value is £1 million or more, unless the court orders otherwise the claim shall be treated as if it had a value of £1 million or more.

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PD51ZG1 & PD51ZG2

- Where there is no CMO
  - You must file an updated Precedent Z the earlier of 7 days before the PTR or 21 days before trial.
  - 20% rule applies.

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Sanctions

- The automatic CPR 3.14 sanction for not filing a budget in the correct time frame (limiting a party to having notionally filed a Costs Budget consisting of Court fees only) does not apply under these Practice Directions.
- Instead, there is a discretion afforded to the Court to sanction a party for failure to comply with any obligation under the Practice Direction, with specific reference to the fact that the Court may impose sanctions including limiting the recovery of costs to be incurred to the applicable Court fees only if a party fails to file a simplified costs budget.

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QOCS- PD51ZG3

- Where QOCS applies, the Court will not make a CMO in relation to D's costs- but retains the power to do so.
- C need not serve a budget discussion report, unless the Court orders otherwise.
- D must still file a Precedent Z.

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Observations

- The form has changed slightly
  - No details of hours or split by fee earners.
  - Rates of solicitor and counsel within assumptions.
  - Counsel's fees and disbursements claimed as a lump sum.
  - Further info required on value of claim, counterclaim and/or additional claim.
  - Space for assumptions is sparse.
  - Will this save any time or cost?

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Conclusions

- Little change to when you have to file a budget.
- Main change is the circumstances where the Court will not make a CMO.
- Need to be aware of the requirement to file an updated budget when there is no CMO.
- As always, keep your budget under review and apply as soon as there is a material development which will increase the costs.
- Are the pilots "simplified"? You can be the judge of that.

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Stephen Herbert Hunt v Oceania Capital Reserves Limited & Ors [2025] EWHC 837 (Ch)

- D served budget 30 minutes late.
- D appeared to have copied the figures claimed by C- even claiming Court fees.
- Budget even stated “Costs Budget of Claimant”
- Front pages and back pages did not match.
- Relief from sanctions refused.

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GS Woodland Court GP 1 Limited & Anor v RGCM Limited & Ors [2025] EWHC 285 (TCC)

- Claim of £30m.
- C total costs of £11m.
- There were 7 Defendants (costs c £13m).
- C costs were almost as much as all the Defendants combined.
- Court commented on the rates being substantially in excess of the guidelines.
- C’s future costs reduced from £8.7 to £4.2m.
- Court said C’s budget was unrealistic and for some phases implausible.
- C to pay the Ds costs of the hearing.

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Lessons

- Don’t assume costs in high value claims will be treated as proportionate.
- Don’t assume a comparison will be a reliable guide.
- Don’t assume there is a rule of thumb!
- A bird in the hand is worth two in the bush.

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N260s in the Rolls Building

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New Pilots

- Practice note issued on 14 April 2026.
- Applies only in the Chancery Division, Technology and Construction Court, the Commercial Court and London Circuit Commercial Court, within the Rolls Building.
- Excel version of the N260 must be filed in addition to N260.
- Bespoke version with self-calculating formula.
- Accommodates up to 12 fee earners and 2 Counsel.

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Solicitor & Client Costs Disputes

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Reminder

- Providing an application is issued within 12 months, the Court will usually order a detailed assessment.
  - *Eurasian Natural Resources v Dechert LLP* [2017] EWHC B4 (Costs) at [12].
  - *Topalsson GmbH v CMS Cameron McKenna Nabarro Olswang LLP* [2025] EWHC 118 (SCCO), at [35].
- Many retainers do not permit interim statute bills.
  - *Iwuanyawu v Ratcliffes Solicitors* [2020] EWHC B25 (Costs) (12 June 2020).
  - *Signature Litigation LLP v Ivanishvili* [2024] EWCA Civ 901 (01 August 2024).
  - *Stella v Hodge Jones & Allan LLP* [2024] EWHC 1704 (SCCO).

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Reminder

- Special circumstances are a low bar:
  - Exceeding fee estimates or failing to give a fee estimate (*Iwuanyawu v Ratcliffes Solicitors* [2020] EWHC B25 (Costs) (12 June 2020), *Masters v Charles Fussell & Co LLP* [2021] EWHC B1 (Costs) (11 January 2021), *Kenig v Thomson Snell & Passmore LLP* [2024] EWCA Civ 15 (18 January 2024).
  - Increasing rates without consent (*Raydens Ltd v Cole* [2021] EWHC B14 (Costs).
  - Something out of the ordinary (*Masters v Charles Fussell & Co LLP* [2021] EWHC B1 (Costs) (11 January 2021) .

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Turner v Coupland Cavendish Ltd [2026] EWCA Civ 1204

- Part 18 request regarding commission from ATE insurer.
  - It is not the role of the Costs Judge to engage in an inquiry into what may or may not be due from solicitor to client or vice versa.
  - The role of a cash account is simply to assist with the arithmetical exercise after the assessment has been completed.
  - It is not the role of the Costs Judge to certify the cash account, undertake inquiries about it or resolve disputes in relation to it.
  - "If the client believes that the solicitor has not full accounted to them, the remedy lies elsewhere".
  - The burden lies on the client to demonstrate any overpayment.
- Paragraph 71 confirms the scope of a solicitor own client assessment.

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Terminating a retainer

- A retainer involving litigation is ordinarily an entire agreement/obligation.
- A failure to complete the work promised could result in the solicitor being unable to recover any of the fees incurred/charged (see *Wild v Simpson* [1918] All ER Rep 682).
- A solicitor should only terminate for good reason and with reasonable notice. In the words of Walker J in *Gill v Heer Manak* (supra.) Claimants should not be "left in the lurch".
- Good reason is an objective test, but it should be something quite serious.
- Common issues might be where there is a fundamental breakdown in trust and goodwill, where the client asks the solicitor to act unlawfully or unethically and/or where the client owes money and refuses to pay.
- It would be prudent to seek to resolve these issues before terminating the retainer.

> "In modern times, solicitors have to accept that complaints (whether of poor service or as to fees) go with the territory of professional practice"
> Sir Andrew Nichol in *Murray v Richard Slade And Co Ltd* [2021] EWHC 3383 (QB)

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Inspection of files

- *Diagnostics.Ai Ltd v Dentons UK & Middle East LLP* [2025] EWHC 2071 (SCCO) (04 August 2025), Costs Judge Nagalingam.
- Inspection usually ordered before points of dispute are prepared.
- Inspection could still be ordered after points of dispute have been served.
- Court has the power to order inspection as per *Hanley v J C & A Solicitors* [2018] EWHC 2592 (QB) (28 September 2018), *Edwards v Slater & Gordon UK Ltd* [2022] EWHC 1091 (QB), CPR 3.1 and in the spirt of CPR 31.
- Inspection limited to the costs claimed.
- Inspection need not be given for items not charged for.
- Sneaky tool for potential prof neg claims?

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Practical Tips

- These disputes are on the rise…
  - Check your retainers permit interim statute bills.
  - Check your invoices are compliant.
  - Give detailed estimates at the outset.
  - Revise estimates as soon as your assumptions change.
  - Be careful and cautious when terminating a retainer.
  - Be mindful of your e-mails and attendance notes. They may one day be examined by your Client and the Court.

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Conduct of litigation v Carrying on the conduct of litigation

An unauthorised person may lawfully perform any tasks, which are within the scope of the conduct of litigation, for and on behalf of an authorised individual such as a solicitor or appropriately authorised CILEX member, provided the authorised individual retains responsibility for the tasks delegated to the unauthorised person (both formal responsibility and the responsibilities identified at section 1(3) of the 2007 Act). In that situation, the authorised individual is the person carrying on the conduct of litigation.

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Delegation / Supervision

The delegation of tasks by the authorised individual to the unauthorised person requires proper direction, management supervision and control, the details of which are a matter for the regulators. The authorised individual must put in place appropriate arrangements. The degree of appropriate control and supervision will always depend on the circumstances.

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Summary

It is not unlawful for an unauthorised person to act for and on behalf of an authorised individual so as to conduct litigation under their supervision, provided the authorised individual puts in place appropriate arrangements for the supervision of and delegation to the unauthorised person.

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Lady Justice Andrews

In essence, the question in any given set of circumstances will be whether the unauthorised person, in carrying out whatever tasks fall within the scope of "conduct of litigation" have been delegated to him or her, is in truth acting on behalf of the authorised individual. If they are, it is the authorised individual who is conducting the litigation. But if the reality is that the litigation is not being conducted by the unauthorised person for and on behalf of the authorised individual, they will be committing an offence.

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Business as usual?

- Responsibility & Supervision
  - Be clear on who is responsible for conducting the case.
  - Ensure you have documented supervisory procedures.
- Costs argument?
  - How do you prove who had responsibility for the case?
  - How do you prove lack of supervision?
  - Will supervision time now be recoverable?
  - Is non-compliance a costs issue or a regulatory issue?

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Interest on CFA funded cases

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General principles

- Unless otherwise ordered:
  - Post judgment interest on costs at 8%.
  - Pre Judgment interest (typically 1% above base rate) from the date of payment of fees.
- What about CFA cases where no fees have been paid?

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Municipio de Mariana v BHP Group (UK) Ltd & Anor [2026] EWCA Civ 1319 (16 October 2026)

- C sought interest from 2023- the date at which half of the fees were incurred.
- Court ordered pre-judgment interest from 2023 to 2026 at 1% above base rate following a Stage 1 trial.
- D appealed on the basis that the Court had no power to award pre-judgment interest on costs "on account of a potential liability to pay a success fee reflecting the costs of funding the litigation" and in any event the Court should not have exercised it in the Claimants' favour.
- D argued success fee not recoverable and pre-judgment interest could only be awarded where a C was out of pocket or had to borrow money to fund their costs.

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Court of Appeal

- Court does have power to order pre-judgment interest for CFA funded cases.
- C had a liability to compensate solicitors for providing services without payment via success fee.
- Pre-judgment interest does not amount to payment of the success fee.
- Appeal dismissed.

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The future?

- Good news for litigation/disbursement funders.
- Good news for those of you funding cases under a CFA.
- Bad news for paying parties. Could be exposed to significant pre-judgment interest.
- Time for paying parties to reflect on offers?
- What if there is no success fee?
- Does it matter if interest belongs to the solicitor?
- Calculating when interest should run from could be complicated
  - From the date each item of work was done?
  - Or adopting a pragmatic and proportionate approach?

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Costs Update

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Tom Whittaker & Amy Khodabandehloo
Burges Salmon

"When could a professional be negligent for using or not using AI?"

Tom Whittaker

Director, Head of AI (Advisory)

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Tom is a director and solicitor advocate in the Technology team.

He regularly advises and trains clients on AI regulation and legal risk. Tom is recognised by Chambers and Partners as a global market leader in AI law (2024 and 2025). He wrote the chapter on Public Law and Procurement Law and AI in the practitioner's textbook the Law of Artificial Intelligence, alongside co-authors Rebecca Williams (Professor of Public and Criminal Law, University of Oxford), Azeem Suterwalla KC and Will Perry (Monckton Chambers) and Burges Salmon colleagues.

Tom holds multiple specialist accreditations in AI and, separately, electronic disclosure technology. He is part of various AI working groups and has lead responses to multiple government consultations related to AI. He is a member of the Society for Computers and Law AI committee. He has also spoken at various conferences on AI and, separately or together, disclosure, including Legal 500 Commercial Litigation conference, Society for Computers and Law AI conference, and the Responsible AI and Risk Management Summit. Tom was recognised as lawyer of the year at Bristol Law Society awards 2024 for his work regarding AI.

Tom also regularly advises clients on commercially significant and complex civil disputes, investigations and inquiries for a wide range of corporate and government clients across different sectors. Tom's focus is on disclosure and evidence management. His experience includes leading disclosure workstreams in litigation, regulatory investigations, and inquiries. Tom's specialism includes the use of AI in disclosure and he co-wrote the ILTA best practice guide to GenAI in eDiscovery.

Experience

- Multiple clients: Advising and training multiple confidential clients on AI regulation and legal risk.
- Public Inquiry participant: Advising a core participant to a Public Inquiry in respect of its disclosure obligations and managing the significant and complex disclosure workstream.
- International IT company: Advising on its disclosure obligations, and leading its disclosure workstream, as part of a supercomputer procurement dispute.
- Multiple central government bodies: Advising on its disclosure obligations in their response to procurement challenges and judicial reviews, and managing disclosure workstreams.
- Transport client and renewable energy manufacturer: Advising on internal investigations for, respectively, potential regulatory disclosures and potential litigation.
- Accountancy practice: Advising in preparation for and response to regulator requests and investigations.
- International defence and security company: Advising on a software licensing dispute.

Credentials

- Admitted as a solicitor: England & Wales (2014)
- Solicitor Advocate (Civil) (2016)
- Saïd Business School, University of Oxford, Artificial Intelligence course (2024)
- Ranked as a Global Market Leader for Artificial Intelligence, Chambers Global, 2024 and 2025

Amy Khodabandehloo

Director

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Amy is a Director in Burges Salmon's Dispute Resolution team. She is an experienced litigator, noted for her expertise in high-value commercial disputes, pensions disputes, and contentious cyber security matters. Her core specialisms include contractual disputes, business ownership disputes, complex pensions-related claims including professional negligence actions, and injunctive relief. Amy has a proven track record of successfully handling complex multi-party claims, and has worked on cases spanning the High Court, Court of Appeal, and Supreme Court as well as the main courts of international arbitration.

Amy advises claimants and defendants on all aspects of dispute resolution, helping clients resolve their disputes and legal challenges in a commercial and cost-efficient way. She builds close working relationships and is adept at providing practical advice in time-critical situations, tailoring her guidance to each client's operational, commercial, and financial objectives.

She is recognised as a 'Leading Associate' by The Legal 500 and an 'Associate to Watch' by Chambers UK.

Experience

- Energy company: Acting in a claim for significant damages following the termination of a large-scale electricity supply contract
- Pension scheme trustees and employers: Acting in multi-million pound professional negligence claims against the clients' former actuarial, investment and legal advisers; and, acting in and compromising claims relating to pension scheme documentation
- Entrepreneur: Advising on the impact of an urgent freezing injunction and acting in the associated business ownership dispute
- Retail client: Advising in the aftermath of a data breach, including successfully resolving a number of GDPR claims and advising on potentially significant onward claims
- Cyber security start-up: Advising on a pre-action dispute with a founding shareholder
- Construction company: Representing one of several defendants in a group claim by 600 individuals, concerning allegations of conspiracy, breaches of data protection legislation, the misuse of private information and defamation claims

Credentials

- Admitted as a solicitor: England & Wales (2014)
- Certified Legal Project Practitioner (International Institute of Legal Project Management)

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Chairman's closing remarks, questions and discussion session

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Notes: -

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