



**PROFESSIONAL NEGLIGENCE AND
LIABILITY UPDATE**

LONDON CONFERENCE

Thursday, 15th October 2026

PROFESSIONAL NEGLIGENCE LAWYERS ASSOCIATION

LONDON CONFERENCE hosted by Cardium Law and Outer Temple Chambers

15th October 2026

0900–0930 Registration and refreshments

0930–0935

“Chair’s Introduction”

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

0935–1000

“Keynote Address - The National ProBono Centre”

Hilton Mervis – Partner, McDermott Will & Schulte UK

&

Colm Nugent – Gatehouse Chambers

1000–1040 (inc 5 mins Q&A)

“Speaking about wills of the dead

– paradoxes and challenges of probate professional negligence claims”

David E Grant KC – Outer Temple Chambers

1040–1120 (inc 5 mins Q&A)

“Claims notification and issue-based costs awards

– the continuing impact of HLB Kidsons v Lloyds Underwriters and Others [2009] Lloyds Rep IR 8 (CA)”

William Godwin KC – 3 Hare Court

1120–1140 Refreshments

1140–1220 (inc 5 mins Q&A)

“Red Flags and Blind Spots: Professional Negligence in Fraud Cases”

Andrew Barns-Graham – 3 Hare Court

1220–1245

“Professional negligence: what the data tell us”

Peter Nussey & Andy Butler – Solomonic

1245–1415 Lunch – Middle Temple Hall

1415–1445 (inc 5 mins Q&A)

“Case Studies of Assignments in Professional Negligence Claims”

Piers Elliott & Daren Hlaing – Henderson and Jones

1445–1525

“Negligence Claims in Insolvency”

Elaine Palser & James Smith – Outer Temple Chambers

1525–1600 (inc 5 mins Q&A)

“Update on use of AI”

David Osborne – Fraser Dawbarns

1600–1615 Refreshments

1615–1650

“What we’ve learnt about mediation - an interactive session”

Sue O’Brien & Sara Benbow – The Property Mediators

1650–1655

“Chair’s Closing Remarks, Questions and Discussion”

Jayna Patel – Cardium Law

1655–1700

“PNLA News Update & Future Events”

Katy Manley – BPE Solicitors & PNLA President

1730–1900

“Old Cock Tavern Fleet Street”

Sponsored Drinks - Outer Temple Chambers & 3 Hare Court

- invitation to PNLA Network – all welcome

**PROFESSIONAL NEGLIGENCE AND LIABILITY
LONDON CONFERENCE
“The Ultimate Round Up IV”
Thursday, 15th October 2026
ATTENDEES (1 of 3)**

Paul Addison	DevAssist Ltd
David Bailey	DMH Stallard
Andrew Barns-Graham	3 Hare Court
Sara Benbow	The Property Mediators
Bethany Bowen	Hogan Lovells Cadwalader
Victoria Bunn	Outer Temple Chambers
Andy Butler	Solomonic
Simon Colledge	PCB Byrne
Jamela Collins	Temple Legal Protection
Tim Constable	Capital Law Limited
Nicky Doble	Independent Mediators
Mary Dobson Smith	National Pro Bono Centre/Dobson Smith Consulting
Kate Dwyer	Edwin Coe
Piers Elliott	Henderson & Jones
Alice Eveleigh-Taylor	Stanley Tee
Catherine Fisher	Morr & Co
William Godwin KC	3 Hare Court
David E Grant KC	Outer Temple Chambers
Colin Hayes	Penningtons Manches Cooper
Liz Heathfield	3 Hare Court
Joseph Henry	Ward Gethin Archer
Daren Hlaing	Henderson & Jones
Beth Holden	Anthony Gold
Claire Holford	HCR Legal
Michael Howard	Wynterhill

Jenny Hutchinson	Wynterhill
Robert Johnson	Healys
Sukhbir Kaur	Temple Legal Protection
Grace Kay	HCR Legal
Leah Kesby	Devonshires Solicitors
Andy Lyalie	Temple Legal Protection
Christopher MacQueen	Cardium Law
Thea Maertens	Gateley Legal
Katy Manley	PNLA President & BPE Solicitors
Phoebe Maton	3 Hare Court
Erin McEwan	Inclusie Club
Hilton Mervis	McDermott Will & Schulte UK
Nishad Morjaria	NDM Forensic Services
Alice Nash	Hailsham Chambers
Laura Nelson	Croft Solicitors
Colm Nugent	Gatehouse Chambers
Petter Nussey	Solomonic
David O'Brien	Penningtons Manches Cooper
Sue O'Brien	The Property Mediators
David Osborne	Fraser Dawbarns
Joanna Osborne	Edwin Coe
Elaine Palser	Outer Temple Chambers
Oliver Pannell	Edwin Coe
Jayna Patel	Cardium Law & PNLA South of England Representative
Andrew Petchey	Setfords Solicitors

Mark Pollatos

Wynterhill

Jonathan Sachs

Edmonds Marshall McMahon

Charlie Shillito

Penningtons Manches Cooper

James Smith

Outer Temple Chambers

Andrew Specter

The Specter Partnership

Caroline Thompson

Withers

Lucy Tolond

DWF Law

Laura Tweedy

The Property Mediators

Brian Walker

Walker McDonald Solicitors

Tom Watkins

Temple Legal Protection

Chun Wong

Hodge Jones & Allen Solicitors



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Sponsored by



HENDERSON & JONES

3 HARE COURT



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

“Chair’s Introduction”



cardiumlaw 

Jayna Patel

Litigation Director
& PNLA South of England Representative

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0207 101 4888

With around 20 years of litigation experience, Jayna has created an excellent reputation for resolving complex commercial disputes on behalf of individuals and businesses.

Additionally, Jayna brings extensive experience concerning litigation funding supported by ATE Insurance. This further enhances Cardium's ability to support its clients through the litigation process with tailored finance solutions.

Jayna's specialism is Claimant Professional Negligence claims, and she is the South England representative for the Professional Negligence Lawyers Association and chairs the annual London PNLA Conference.

Client Testimonials:

"I would like to say how much I have appreciated and indeed enjoyed working with you on this claim. You have a wonderful combination of skill, knowledge and feisty steel so necessary for these situations. I have learnt a lot from our work together. I have enjoyed understanding the law – and we certainly covered quite a few diverse aspects in this case – as well as the tactics involved. You clearly love the work you do, and you dedicate so much time and effort to doing it well. I haven't had any experience in the past of working on a litigation claim, but I am sure that you must be one of the very best practitioners in the business." – **Client, May 2026**

"We were advised to contact Jayna for advice on the best way forward after a very difficult couple of years, we found her the utmost professional, but with a very human touch, and she was a pleasure to work with, to end up achieving a very satisfactory result." **Client, 2024**

"Jayna's meticulous and methodical efficient input, her professional acumen and considerable experience have been invaluable in resolving our protracted claim. Throughout the six months, (which were not entirely uneventful) we were particularly impressed with her calm and measured but firm approach, clarity, attention to detail, communication and negotiating skills which ensured our successful outcome. Our case related to a professional negligence claim against a solicitor whose negligence had engulfed us in a long and expensive dispute. Our trust in the legal profession had been badly damaged not only by a particular negligent solicitor but also by some ineffective, confusing and at times, contradictory legal guidance we had previously received during the dispute years. Through her expert and effective advice and insightful guidance with the professional negligence claim, Jayna has managed to restore some of our faith in her profession." – **Client 2024**

"I was recommended to Jayna for advice in a complicated dispute involving professional negligence over VAT in a building contract, not helped by the death of the defendant who died intestate during proceedings. It was resolved satisfactorily with both common sense and an impressive legal knowledge." – **Client, 2024**

"The fact that we received such first-class service from Jayna who achieved in six months what her predecessors had failed to achieve in six years, speaks for itself." – **Client, 2023**

"We were initially told we would be highly unlikely to succeed in our case. That was until we discussed it with Jayna. Her confidence and determination to prevail was an inspiration and gave us the courage to fight. It has been emotional to say the least and she was sensitive to this alongside her professionalism. We are extremely grateful and are now in a situation to get our lives back on track. We shall be forever grateful." – **Client, 2023**

"Our case required a great deal of patience and determination on both our parts, however your professionalism and stoicism was of huge comfort to me over the past two years. There were times on our case where I was emotional, applied pressure on fees and challenged you on your judgement and professional opinion, some of which were reflections of the strain that we were under and the significance and importance of the case to us. You were always honest, fair, level and straight talking in response to this. It was through this that you earned our trust and it will endure well beyond the conclusion of our case." – **Client, 2023**

From Legal Directories

"The other step forward was with Jayna Patel who was equally amazing. Always took the time to discuss each step of the case." – **Legal 500, 2022**

"Jayna Patel was absolutely excellent, completely on the ball with a clear understanding of the legal issues and fantastic organisational skills. I was really impressed by her client-handling." – **Legal 500, 2020**

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Hilton Mervis
Partner, McDermott Will & Schulte UK
&
Colm Nugent
Gatehouse Chambers

Keynote Address - The National ProBono Centre ”

THE NATIONAL PROBONO CENTRE



McDermott
Will & Schulte

Hilton Mervis

PARTNER

LONDON – 22 BISHOPSGATE

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Hilton Mervis has nearly 30 years' experience of litigating and resolving high-value, complex and multi-jurisdictional disputes. He represents corporations, private equity firms, hedge funds and high-net-worth individuals on a wide variety of disputes and has particular experience in the alternative investment sector, covering private equity and hedge fund litigation, partnership disputes, complex civil fraud, contractual and banking disputes, shareholder and corporate governance disputes, and financial services matters.

Hilton is a solicitor advocate and member of the Commercial Court Users Committee by appointment. He is a founding member and Chair of the London Commercial Litigators' Forum. He is also the editor of the authoritative text *Managing Private Fund Disputes* (PEI Media) and of *Global Legal Post's Commercial Litigation Guide*.

Call: 1992

Colm Nugent

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Practice overview

Colm is a specialist barrister in the fields of personal injury and related insurance issues. He is also instructed in a variety of disputes outside these core fields including difficult interlocutory applications, having lectured extensively on the CPR and related costs issues.

Colm acts for both Claimants and Defendants in all aspects of injury and related disputes with a particular focus on lower limb injuries, subtle brain injury (especially those leading to an increased risk of dementia), complex loss of earnings claims, hand injuries and long-term loss claims as well as fatalities. He is an acknowledged specialist in claims concerning the application of the Defective Premises Act, which has taken him to the Court of Appeal this year.

He is sought after by insurers for cases where fraud and exaggeration are suspected and has had success at striking out a number of such claims. Colm lectures regularly on the CPR, litigation tactics, defending fraud claims, bringing complex loss claims and issues arising from disability and interpretation of the Ogden reduction factors. Colm is also an accredited ADR Group Mediator.

Colm regularly speaks at training events and seminars, and also gives webinars for Practical Law, LexisNexis and others (full details within Colm's webinar tab).

Clinical negligence & personal injury

Personal injury

Solicitors and insurers recognise Colm's extensive experience in dealing with high value injury and complex injury claims particularly where exaggeration or credibility issues arise or where fraud is suspected.

Recommended by Legal 500 as a leading junior in this area, he is also regularly instructed in cases with technical aspects on liability (e.g. construction site accidents or product liability) or quantum (e.g. self-employed/business losses claimed, complex medical history and causation issues, life expectancy and cost of care arguments).

Colm has specific expertise in catastrophic injury claims, employers' & public liability (including disease), multi-party actions, product liability, sports/leisure related claims, RTAs and costs issues. He is a successful appellate advocate: in the County Court, High Court and Court of Appeal. He advises on a range of insurance law and costs issues arising out of, principally, employer's liability, public and product liability claims. Colm's professional clients value his attention to detail, client-handling skills and compelling arguments in court.

Colm has appeared in Inquests and in the criminal courts on HSE Prosecutions to represent and defend clients interests ahead of anticipated civil proceedings. These include medical implant complaints, deaths at work as a consequence of allegedly defective equipment, and deaths in motor accidents; as well as advisory work concerning the approach to these types of proceedings in circumstances where the findings may well be used to support Fatal Accident claims at a later stage.

He is regularly instructed for round-table settlement meetings and mediations negotiating favourable compromises in high value claims.

He is presently instructed as sole Counsel in a range of catastrophic injury claims for brain injury, psychiatric harm, and serious limb injury claims exceeding £1 million.

Recent cases

- *Hannon v LBH* (2012) – Lawtel: DPA claim by tradesman who suffered major injury when bannister removed a san aesthetic feature by tenant. Succeeded on liability in QBD and thereafter negotiated substantial damages in settlement meeting.
- *Gill v Hassan* (2012) – Lawtel: *Successful Ward v Tesco* claim at first instance and in the Court of Appeal. Written submissions requested in the Supreme Court led to the matter being dismissed on paper.
- *Sharma v Noon* (2011) – Lawtel: EL claim involving machine injury to hand. Succeeded on liability and thereafter on Ogden 7 Award before the QBD.
- *Dodd v Raebarn Estates* (2013): Acting for leaseholder in multi-party fatal accident claim where deceased was killed by (allegedly) defective stairwell.
- *Yeomans v Technopali* (2012): Acting for major industrial manufacturer in complex claim where specialist repair operative severely injured during the course of the repair itself. Arguments centred on applicability of PUWER in such cases.
- *Oddy v C.C.* (2013): Acting for major drinks manufacturer in EL claim based on psychiatric injury occasioned by release of caustic solution.
- *Tewes v Osborne* (2013): Acting for national building contractor in substantial claim brought for genuine injury. As a consequence of Colm's involvement due to concerns about exaggeration, the entire claim was abandoned.
- *Nuttal* (2013): Successfully obtained admission of liability in substantial personal injury claim arising out of Zorbing activity.
- *Littlejohn* (2013): Moderate brain injury claim to minor resulting in lifetime loss claim. Colm is instructed as lead counsel against a KC.
- *Mohammed v CIS* (2013) – Lawtel: Successful strike out of multi-party RTA claim at interlocutory stage following defence of fraudulent conduct.
- *Walsh* (2013): Acting for would-be trainee solicitor who suffered a moderate right-sided stroke a week after a low velocity whiplash claim. Causation disputed. Claim settled for precisely £1m.
- *Simeone v Weekes* (2013): Successfully secured finding of 100% liability against boat owner when new employee fell through the hatch and very seriously injured leg/ankle. Quantum claim transferred to High Court when damaged claimed reached £3m. Later settled on confidential terms.

- *Peverill v LBH* (2011) – Lawtel: Successful liability claim in contested highways claim. Issue was whether the HWA frequency of inspection was appropriate, and the proper classification of the section of highway concerned, it being a crossover.
- *Brennan* (2013): Complex injury claim in which claimant is involved in multi-jurisdictional maintenance with on-going shoulder injury. Liability for injury as cyclist disputed.
- *Barling v Dye* (2013): Head injury following cycle accident resulting in subtle brain injury. Issue is whether the court should make any reduction for C now wearing a cycle helmet.
- *Andrews v RAC* (2013): C was an official taking part in a semi-amateur race meeting when a car left the track and seriously injured him. Issue was the layout of the track (the angle of the corner) and the adequacy of the safety measures. Liability determined in C's favour, quantum yet to be determined.
- *Da Silva* (2012): Chronic pain case in which experts were at loggerheads over whether client had CP and allegations of fraudulent exaggeration. Settlement figure confidential but substantial.

Employers' Liability

Colm is recognised for his expertise in employers' liability cases. He is regularly instructed in claims arising principally out of serious injury accidents and fatalities.

He is instructed both to bring and defend high value claims for EL insurers (especially in claims where exaggeration and/or fraud is suspected), and to bring and defend contribution proceedings and recovery actions arising out of EL claims.

Colm has also appeared to defend and represent companies (and occasionally individuals) facing Health and Safety Prosecutions and/or criminal charges relating to use of machinery or vehicles as a precursor to an injury claim.

Relevant cases

- *Sharma v Noon* (2011) – Lawtel: EL claim involving machine injury to hand. Succeeded on liability and thereafter on Ogden 7 Award before the QBD.
- *Yeomans v Technopali* (2012): Acting for major industrial manufacturer in complex claim where specialist repair operative severely injured during the course of the repair itself. Arguments centred on applicability of PUWER in such cases.
- *Oddy v C.C.* (2013): Acting for major drinks manufacturer in EL claim based on psychiatric injury occasioned by release of caustic solution.
- *Tewes v Osborne* (2013): Acting for national building contractor in substantial claim brought for genuine injury. As a consequence of Colm's involvement due to concerns about exaggeration, the entire claim was abandoned.
- *Simeone v Weekes* (2013): Successfully secured finding of 100% liability against boat owner when new employee fell through the hatch and very seriously injured leg/ankle. Quantum claim transferred to High Court when damaged claimed reached £3m. Later settled on confidential terms.

Public Liability

Colm has extensive experience in public liability cases arising out of fatalities and serious injuries for both insurers and Claimants.

Relevant cases and work

- *Gill v Hassan* (2012) – Lawtel: Successful *Ward v Tesco* claim at first instance and in the Court of Appeal. Written submissions requested in the Supreme Court led to the matter being dismissed on paper.
- *Hannon v LBH* (2012) – Lawtel: DPA claim by tradesman who suffered major injury when bannister removed a san aesthetic feature by tenant. Succeeded on liability in QBD and thereafter negotiated substantial damages in settlement meeting.
- *Dodd v Raebarn Estates* (2013): Acting for leaseholder in multi-party fatal accident claim where deceased was killed by (allegedly) a defective stairwell.
- *Nuttal* (2013): Successfully obtained admission of liability in substantial personal injury claim arising out of Zorbing activity.
- *Peverill v LBH* (2011) – Lawtel: Successful liability claim in contested highways claim. Issue was whether the HWA frequency of inspection was appropriate, and the proper classification of the section of highway concerned, it being a crossover.
- *Andrews v RAC* (2013): C was an official taking part in a semi-amateur race meeting when a car left the track and seriously injured him. Issue was the layout of the track (the angle of the corner) and the adequacy of the safety measures. Liability determined in C's favour, quantum yet to be determined.
- *Da Silva* – (2012): Chronic pain case following fall outside an hotel in which experts were at loggerheads over whether client had CP and allegations of fraudulent exaggeration. Settlement figure confidential but substantial.

Road Traffic

Colm regularly acts in road traffic cases both for insurers and Claimants and has enormous experience of such cases at trial.

Relevant cases

- *Littlejohn* (2013): Moderate brain injury claim to minor arising from a car accident resulting in lifetime loss claim. Colm is instructed as lead counsel against a KC.
- *Walsh* (2013): Acting for would-be trainee solicitor who suffered a moderate right-sided stroke a week after a low-velocity whiplash accident. Causation disputed. Claim settled for precisely £1 m.
- *Brennan* (2013): Car accident involving cyclist. Complex injury claim in which claimant is involved in multi-jurisdictional maintenance with an on-going shoulder injury.
- *Barling v Dye* (2013): Head injury following cycle accident resulting in subtle brain injury. Issue is whether the court should make any reduction for C now wearing a cycle helmet.

Occupiers' Liability

Colm has extensive experience in occupiers' liability cases arising out of fatalities and serious injuries for both insurers and Claimants. Colm has written articles and lectured on the duties of occupiers in open spaces.

Product liability

Colm has extensive experience in product liability cases arising out of serious injuries and property damage for both insurers and Claimants.

He is regularly instructed by major appliance manufacturers to defend product liability claims.

Colm has been instructed in claims involving all manner of consumer goods causing injury or potential damage.

Insurance funded disputes

Colm regularly acts in personal injury and negligence claims involving insurers. You can see details of his experience in the Personal Injury and Professional Liability sections of his profile.

Legal professionals

Colm has represented claimants in a wide range of professional negligence actions involving surveyors, architects and other professionals arising out of construction accidents and product liability claims as well as defendants and claimants in actions against solicitors concerning their conduct of personal injury action.

Recent cases

- *Hayes v Solicitor* (2012): Defending professional negligence claim. Claim settled for 3% of £650,000 special damages schedule following service of the counter-schedule.
- *Ruberia v (Construction Company)* (2013): Substantial dispute involving the refurbishment of large tenanted property which has led to the likelihood of it requiring demolition.

CSR & pro bono work

Social engagement and community activism are central to Colm's work ethic. Since joining the Bar, he has always been involved in and dedicated a substantial amount of time each year to pro bono work.

He is an ambassador for Advocate, the Bar Council's pro bono scheme, and regularly handles substantial matters on their behalf. He also works with leading politicians to promote community activism at government level.

Directory recommendations

Colm is recommended by Chambers UK and Legal 500 for Personal Injury.

- *"Colm Nugent provides very sensible advice and is very effective in court."* (Chambers UK 2026, Personal Injury)
- *"Colm is extremely clever, very tactical, and excellent at cutting through the detail of a case to reach the key issues. His advocacy is excellent. He also has a flexible approach to handling cases."* (Chambers UK 2026, Personal Injury)
- *"He is very responsive and has a good turnaround. He can quickly analyse a lot of information. His advocacy both in pleadings and orally is persuasive. He is good with grasping even the small details."* (Chambers UK 2026, Personal Injury)
- *"Colm demonstrates excellent attention to detail and always sees the bigger picture."* (Chambers UK 2026, Personal Injury)
- *"Colm is hugely experienced and extremely tactical. He also has a great rapport with clients."* (The Legal 500 2026, Personal injury)
- *"Tactically astute, Colm brings a wealth of experience to all cases. He offers a unique insight and is very tactically flexible, offering a different viewpoint and approach for how to take a case forward. Clients love him."* (The Legal 500 2025, Personal Injury)

- *"He is a very skilled advocate and has strong client care skills as well as the skill to cut through the detail in complex cases to provide advice which is both clear and concise."* (Chambers and Partners 2025, Personal Injury)
- *"His ability to find a clever, tactical solution that no one else thought of is well known, and he is very well liked by judges because he is not formulaic."* (Chambers and Partners 2025, Personal Injury)
- *"Colm is truly impressive. He will go the extra mile and leave no stone unturned."* (Chambers and Partners 2025, Personal Injury)
- *"Colm is tactically brilliant. He gets into the bones of a case and has a very keen eye for how to strategise through the nuances of litigation."* (The Legal 500, 2024)
- *"He is a very technically skilled barrister. He will really drill down to the detail, and his written arguments are very effective and persuasive."* (Chambers and Partners 2024)
- *"Colm is very easy to work with and provides clear and concise advice."* (Chambers and Partners 2024)
- *"Colm has a real expertise for technical arguments."* (Chambers and Partners 2024)
- *"Colm has a real talent to make the client feel at ease when dealing with difficult subjects and provides clear and straightforward advice."* (Chambers UK, 2023)
- *"Colm is very impressive on his feet."* (Chambers UK, 2023)
- *"Colm is a future silk. He is commanding, persuasive and a great communicator."* (The Legal 500, 2023)
- *"Calm but also very tenacious which is a fantastic combination when fighting tough cases."* (The Legal 500)
- *"He's brilliant at talking to clients in a sensitive and straightforward way. He is reassuring, but also good at telling the truth."* (Chambers UK)
- *"A natural eye for detail who is able to carry out astute assessment of risk."* (The Legal 500)
- *"He's a very charming advocate who is good with both judges and witnesses"* (Chambers UK)
- *"Impressive in both his paperwork and advocacy"* (Chambers UK)
- *'Calm but also very tenacious which is a fantastic combination when fighting tough cases'* (The Legal 500)
- *'He has an unerring eye for a winner and is prepared to back his assessments to the hilt. He has a staggering appetite for work.'* (The Legal 500)" *His preparation for court hearings is meticulous and he is a highly persuasive advocate"* (Chambers UK)
- *"His speed in understanding and assimilating the issues in any case is always impressive"* (The Legal 500)

Professional associations

- Personal Injury Bar Association
- Professional Negligence Bar Association
- British Insurance Law Association
- Employment Law Bar Association
- London Common Law Bar Association

Publications

Contributor to Paul Reed KC's *Construction All Risks Insurance*, Sweet & Maxwell, 2014.

'Early Neutral Evaluation: how might it assist your client?' *Expert Witness Journal*, June 2022.

Qualifications

- B.A. (Kent)
- Colm came to the Bar from employment at Smithkline Beecham (now Glaxo Smithkline)

Webinars

Colm regularly provides webinars for various organisations including Practical Law and MBL. If you have access to Practical Law and/or LexisNexis, you will be able to watch his latest ones:

- [Persuading the court: obtaining relief from sanctions](#) (Practical Law)
- [Persuading the court: resisting strike out and summary judgment applications](#) (Practical Law)
- [Persuading the court: setting aside a default judgment](#) (Practical Law)
- [Challenges in Brain Injury Claims' looks at the legal position and provides some practical tips when taking these cases to trial](#) (LexisNexis)

Insights

10/08/2026 Ten ways to give your interim and interlocutory applications the very best chances of success

13/05/2026 Part 36 offers when the prognosis is unclear

20/10/2023 How Smith v Finch has been run over by a Boris bike

07/07/2023 Aggravated damages in personal injury claims: are they ever recoverable?

16/03/2023 QOCS changes in April 2023: the practical and tactical implications for claimants and their solicitors

Past events

20/03/2026 Personal Injuries Bar Association Annual Conference 2026

21/11/2024 Professional Liability Conference 2024

17/09/2024 Head Injury Litigation Insights, Opportunities and Pitfalls

11/12/2023 How the Supreme Court decision in Griffiths v TUI will affect every civil litigation specialist and trial lawyer

16/09/2022 MBL: Expert Witnesses & Liability for Costs – An Update for Personal Injury Lawyers

16/03/2022 J2J Clinical Negligence Webinar: Session 4 – What do you need to prove: Causation

10/02/2021 #HardwickeBrew – Clinical Negligence & Personal Injury – Circumventing QOCS?

20/09/2016 Trip hazard! A review of professional negligence actions arising from the conduct of personal injury litigation

Related newsletters

16/03/2021 Focus On...Professional Liability

29/10/2020 Clinical Negligence & Personal Injury Newsletter: November 2020

29/10/2018 Clinical Negligence and Personal Injury Newsletter

Practice managers



 Person	27 Mar 2018
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Natasha Devlin-Clingham



 Person	29 Mar 2023
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Adam Macdonald



 Person	22 Dec 2022
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Marc Griffin

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David E Grant KC
Outer Temple Chambers

*“Speaking about wills of the dead
– paradoxes and challenges of probate professional
negligence claims”*

David E Grant KC

Year of Call: 1999
Year of Silk: 2022
Direct Access: Yes

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David E. Grant KC TEP is a chancery and **commercial** practitioner with specialist expertise in **pensions, trusts, will and estates** and **professional negligence**.

He has extensive advocacy experience up to the European Court of Justice and has also attended numerous mediations and round table meetings. David is happy as sole advocate or leading a counsel team and enjoys the process of working with his instructing solicitors, lay clients, insurers, funders, experts and other interested parties.

His clients have included many leading international businesses including British Airways, Lloyds Bank, the Atos Group and BT, leading professional advisers including Aon, Mercer, Barnett Waddingham and Momentum Global Investments, prominent charities and trusts, various statutory bodies as well as high net worth individuals and group claimants.

David has been recommended in a total of 4 areas in Chambers and Partners and the Legal 500 since 2007 and has been described as "absolutely amazing", a "first rate silk" "a polished advocate with the ear of the court" "a go to practitioner in this area" and "analytical and creative at finding solutions to difficult problems", "he will do his utmost to find the answer to support the client's position".

Areas of Expertise

Commercial Litigation

David has experience in numerous commercial litigation matters including:

- Restrictive covenants, breach of fiduciary duty and use of confidential information in director, employment and franchise contexts
- Fraud and asset tracing
- Insolvency and restructuring including s423 applications (transactions defrauding creditors)
- Enforcement of judgments and arbitral awards
- Arbitration

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Notable Commercial Litigation cases

Cheshire v Blanchfield [2024] EWCA Civ 1317

An important case about what fiduciaries can do when preparing to compete with their principal in the future. The Court clarified that it is not automatically a breach of directors' statutory or fiduciary duties (or employees' duties of fidelity) to take preparatory steps towards competing with his or her principal, even whilst remaining a director.

HRCKY Ltd v Hard Rock Limited (2) Hard Rock Café International [2025] UKPC

On appeal from the Court of Appeal of Jersey [2024] JCA 069. Appeal by franchisee concerning misrepresentation and, in particular, whether dol par reticence is a principle of customary law in the context of relational contracts.

CGC v NIOC, Retirement Fund [2024] EWHC 835 (Comm) CL-2022-000383 (appeal listed July 2024)

Claim to enforce \$2bn arbitration award. The forthcoming appeal concerns whether commercial property in SW1 (c.£200m) is owned by the National Oil Company of Iran and is available for enforcement or whether the property was held on trust by NIOC for the benefit of Retirement, Saving and Welfare fund of Oil Industry Workers.

Michael Jackson v (1) Michael Pensaville (2) Andrew Brooksbank CL-2022-000188

Claim to set aside a share sale agreement on the grounds of duress or undue influence. David successfully resisted an application in December 2023 to strike out the draft amended particulars of claim.

McGaughey v University Superannuation Scheme Ltd [2023] EWCA Civ 873

Milestone judgment concerning a multi-derivative claim by members of a pension scheme against the directors of a trustee company for breach of the statutory and fiduciary duties concerning the valuation of the pension scheme and investment in fossil fuels. The case was listed as one of the Lawyer's Top Ten Appeals of 2023 and has profound implications for pensions, trusts and company law practice and practitioners. The case raises the intersection of a company law derivative claim and a trusts derivative claim (where beneficiaries of a trust bring a claim when the trustees are disabled or unwilling to do so) and revives the concept of dog-leg claims while calling into question single purpose trust companies.

Dwyer v Fredbar & Bartlett Claim No. BL-2020-001411

The leading case on the enforcement of post-termination restrictive covenants in the area of franchises. The claimant/appellant franchisor sought to restrain the defendant former franchisee from trading in the exclusive marketing territory contrary to restrictive covenants. The defendants (whom David represented) contended that the contract is voidable for misrepresentation, that the claimant was in fundamental breach of contract and that, even if the post-

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termination restrictions survive, they are unreasonably wide and, hence, unenforceable. The trial judge held the covenants to be unenforceable. Dwyer appealed to the Court of Appeal who unanimously dismissed the appeal, holding that inequality of bargaining power is one of, if not the, most significant factors for determining the reasonableness of a restraint against trade.

Citadel Securities v Cologlu 2021

Claim for £100m in the London Court of International Arbitration. The claimant high frequency quantitative trading company claimed that the defendant misused confidential information when he provided a competitor with a draft business plan. The defendant contended that he was doing no more than making use of lawfully acquired skill, knowledge and experience.

Trusts, Probate and Estates

David is experienced in contentious and non-contentious issues, acting for beneficiaries, trustees, executors, advisors and other interested parties in a variety of disputes and matters.

David is particularly interested in cross-over matters whether concerning the tax consequences of asset recovery proceedings, the responsibilities of pension scheme trustees in matrimonial disputes or otherwise. He is currently advising on and acting in (amongst other matters) applications for clearance to HMRC, appeals to the HMRC against tax charges, the abilities of executors to vary trusts under a will, the enforcement of compromise agreements in probate proceedings, an appeal to the Upper Tribunal to rectify a TR1 following a sale of property. He has extensive experience in *Public Trustee v Cooper* blessing applications and *Beddoe* applications for trustees and beneficiaries alike.

Notable Trusts, Probate and Estates cases

CGC v NIOC, Retirement Fund [2024] EWHC 835 (Comm) CL-2022-000383 (appeal listed July 2024)

In the context of a claim to enforce an arbitration award, the issues on appeal concern the declaration of trusts of land under s.53(1)(b) Law of Property Act 1925 and, in particular, whether agents and/or attorneys can evidence or declare trusts. The appeal is destined to become the leading authority on the issue.

Wade & Nicholson v Singh [2024] EWHC 1203(Ch)

A s423 application by liquidators against former directors for an order of sale of 4 properties. The claim concerned whether a 2017 Declaration of Trust by a father and daughter-in-law in favour of the latter evidenced an oral declaration of trust said to be made a decade before or constituted an effective written declaration or was a sham.

Chambers v Thomas Miller Wealth Management Ltd BL-2018-001811

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A successful application by Mr Chambers to trace a £3.7m pension pot transferred on false premises as part of a pensions liberation scheme to cheat HMRC into certain assets held by the defendants.

Khurshid v Sam-Yorke

Ongoing appeal to the Upper Tribunal to rectify a contract of sale of a new-build property and the Land Register which contract inadvertently included the whole of a certain title of land rather than just part of it with the consequence that the contract also included separate land, 100m away and not marketed by the estate agents, which was earmarked for planning permission and development.

Phillips v Chatfeild-Roberts

PT-2017-000117 contentious probate claim as to the whether the testator's will should be proved having regard to capacity, undue influence and fraudulent calumny. Settled the day before trial and would have been the longest such case in England and Wales.

Jones & Anor v Roundlistic [2019] 1 WLR 4416

Court of Appeal, leading decision on whether a term in a lease preventing sub-letting is unfair under the UTCCR 1999.

Pensions

David has been involved in some of the most high-profile pensions cases in recent years including appearing before the Grand Chamber of the ECJ in **Safeway Ltd v Newton & Anor [2020] Pens.L.R. 4** as to whether a scheme can be retrospectively levelled down.

David acts for employers, trustees, members, professional advisors and public bodies. David has acted in many of the rectification cases since 2016 including:

Hogg Robinson v Harvey, Sovereign Trustees, Saga Group v Paul, Girls' Day School Trust v GDST Pension Trustees, Vocalink Ltd v (1) Voca Pension Trustees Ltd & (2) Kris Kubiena, (1) ITV Network Ltd (2) ITV Services Ltd v (1) ITV Pension Scheme Ltd (2) Mr Geoffrey Draughn, Nomura International Plc v Nomura London Retirement Benefits Plan Trustees Ltd and another, Lloyds Bank Plc v Lloyds Banking Group Pensions Trustees Ltd Colart International Holdings v Colart Pension Trustees, Blatchford v Blatchford, SPS Technologies v Moitt, Viavi Solutions UK v Viavi Solutions Pension Trustee UK, Sirdar Plc Retirement Benefits Plan: Aire PLC and (1) Philip Andrew Copley & Ors, Cobham Ltd & Ors v Geoffrey White, TI Group Pension Scheme, Cabot G.B. Ltd v Taylor & Ors.

Notable Pensions cases

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Places for People Pension Trustee Ltd v Places for People Group Ltd (imminent)

One of the most complex Part 8 claims concerning 10 definitive deeds and supplementary deeds whose validity is in question by reason of formality issues and/or s37 Pension Schemes Act. Rectification is also sought in relation to five deeds.

TI Group Pension Scheme (judgment awaited)

The first consideration by the court as to whether the contractual test of rectification or the pensions tests applied to transfer agreements entered into by employers and trustees of various schemes as part of a merger of assets and liabilities.

McGaughey v University Superannuation Scheme Ltd [2023] EWCA Civ 873

Milestone judgment concerning a multi-derivative claim by members of a pension scheme against the directors of a trustee company for breach of the statutory and fiduciary duties concerning the valuation of the pension scheme and investment in fossil fuels. The case was listed as one of the Lawyer's Top Ten Appeals of 2023 and has profound implications for pensions, trusts and company law practice and practitioners. The case raises the intersection of a company law derivative claim and a trusts derivative claim (where beneficiaries of a trust bring a claim when the trustees are disabled or unwilling to do so) and revives the concept of dog-leg claims while calling into question single purpose trust companies.

Safeway Ltd v Newton & Anor [2020] EWCA Civ 869

The decision of the CA on the outstanding point as to whether s62 Pensions Act 1995 equalised the Safeway scheme.

Atos IT Services (UK) Ltd v Atos Pension Schemes Ltd [2020] EWHC 145 (Ch)

Whether a pension in payment can be indexed by reference to CPI having regard to the meaning of "the General Index of Retail Prices (all items)" and "where that index is not published".

Safeway Ltd v Newton & Anor [2020] Pens.L.R. 4

Decision of the Grand Chamber of the ECJ holding that, as a matter of European law, a scheme cannot be retrospectively levelled down even if, as a matter of English law, the benefits are defeasible.

Blatchford Ltd v Blatchford & Ors [2019] EWHC 2743 (Ch)

The first decision to consider whether the subjective intention test identified by the Court of Appeal in FSHC is to be adopted in pensions rectification cases.

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Re G4S Pension Scheme [2018] Pens.L.R. 16

Leading decision on whether a member of a defined benefit scheme closed to future accrual but with a final salary link is in "pensionable service" such that the scheme is "open" as opposed to "frozen" for the purpose of pensions legislation.

Beaton v Board of the Pension Protection Fund [2017] EWHC 2623 (Ch)

Nugee J, meaning of "attributable to his pensionable service" which has led the DWP to amend the legislation.

Professional Negligence

David acts for a wide range of advisors and clients in professional negligence claims against lawyers, actuaries, accountants, investment managers, investment consultants, benefits consultants and the like. David is currently acting for conveyancing solicitors in mistaken sale of property, solicitors who advised a wealthy individual about his tax affairs, various trustees and executors and other claimants. He often works simultaneously in the underlying Part 8 or equivalent claim as well as the Part 7 professional negligence action.

In a pensions context David is currently acting/has recently acted in several cases for (respectively) the trustees, solicitors and actuarial consultants concerning variously compliance with the power of amendment, formalities and the tax consequences of investment in residential property. Often the cases are highly complicated, brought against multiple defendants and raise a whole array of questions concerning consecutive duty, causation, limitation and exoneration clauses.

David has just appeared in a successful mediation concerning one of the first cases to arise out of the LDI crisis in October 2022 following the Truss/Kwarteng mini budget and the urgent call on liquidity for all hedged schemes.

Professional negligence cases in the pensions context invariably settle on confidential terms. Cases which are in the public domain include:

Notable Professional Negligence cases

The professional negligence action arising out of **CMG Pensions Trustees v CGI IT UK** [2022] EWHC 2130 (Ch) concerning a subsequent advisor's duty to advise on the prospect of a claim against former advisors.

Briggs & Ors v Clay & Ors [2019] EWHC 102 (Ch)

Preliminary application concerning the ability to refer to without prejudice communications whether it was alleged that advisors were negligent in the course of without prejudice negotiations. The matter was listed for what would have been

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the most high-profile and complex pensions professional negligence claims, raising several Supreme Court points.

Stanley Gibbons v Alexander Clay & Ors HC13D003111

In which David persuaded the court to order expert legal and actuarial evidence.

PPF v Aon Consulting Financial Services Ltd & Ors HC-2014-002064

In which the court considered the appropriateness of expert evidence in a claim against actuarial consultant and lawyers.

PPF v Hill

Claim against former pension trustees / scheme advisors for breach of the investment regulations by investing solely in a commercial property portfolio.

Aon Pension Trustees Ltd v MCP [2012] Ch 1

The first appellate consideration of s27 of the Trustee Act 1925 (protection of trustees by means of advertisements).

Memberships

- Pensions Litigation Court Users Committee – Secretary
- **Association of Pensions Lawyers** – former chairman of Litigation Committee
- Bar Council – Race Working Group and Combar committee member
- **Combar** – former Executive committee member
- **Bar Council** – Pupillage Supervisor Network
- **Chancery Bar Association** – Head of the Mentoring Scheme and the Academic & Liaison Sub-Committee
- **STEP**

Languages

- French
- Serbian(basic)

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Publications

- Individual Pensions Claims and Complaints – Are Members Interests Being Served? [2024] 1 TLI 38
- PD57AC – witness statements for claims for rectification of pensions documents [2024] Pensions Barrister
- The protectors power of consent an evolving concept [2022] ThoughtLeaders4Private Client Magazine Issue 6
- Restraint of trade and inequality of bargaining power – [2022] ELA Briefing Vol 29 No 9
- Will-Making in Difficult Circumstances: How to Comply with Formal Validity Requirements
- A poisoned mind: Some truths and misconceptions concerning fraudulent calumny (2020 Trusts Quarterly Review)
- The Rise and Potential Fall of Corrective Construction (2019 Trusts Law International)
- When all else fails: Rectification of voluntary settlements (2018 Trusts Quarterly Review)
- Further elephants in the room: pension trusts, professional negligence claims and what we still do not know (2015 Trusts Law International)

Awards

- Scholar of Worcester College, Oxford
- Major Scholar of the Inner Temple

Recommendations



Outer Temple Chambers



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**PNLA London
The Ultimate Round Up IV**

"Speaking about wills of the dead – paradoxes and challenges of probate professional negligence claims"

Thursday 15th October 2026
David E. Grant KC

1

Introduction – the ultimate paradox

- Lawyers and other professionals are engaged by or on behalf of the testator/testatrix
- The duty will be owed to the client (and then the estate)
- The loss will be suffered by the disappointed beneficiary.
- Can this disconnect be reconciled?
- See also the fact that the testatrix will never be subject to inheritance tax

2

Example: Lonsdale v Wedlake Bell LLP

- Alleged negligence re terms of a settlement trust and lost opportunity to vary
- Claim brought by settlor/trustee, trustees and children
- The solicitors argued that
 - the children had no good claim because the solicitors' duty of care was owed to the settlor and the trustees, not to them;
 - (2) the trustees had no good claim because the trust as a whole had suffered no loss and the trustees owed fiduciary duties to all the beneficiaries, not just the settlor's children;
- Judge decided not to strike out the claim

3



Outline of the talk

- The types of claims that typically arise
- Interaction between claims by estate and claims by beneficiary
- Interaction between probate claims and professional negligence
- Transferred loss, double recovery, lacunae and alternative claims
- Prospective statutory and fiscal changes
- Relevance of these concepts to other professional negligence claims
- More general lessons to be learned

4

4



Array of Potential Claims

- Failing to enable testatrix can leave the assets she wants to
- Drafting and execution of wills and the like
 - Failure to draft a will at all
 - Failure to ensure that the necessary formalities were complied with
 - Drafting the will so as not to reflect the testatrix's wishes
- Administration of the estate
- Conduct of litigation



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Nature of an adviser's duty

- Duty not just to record instructions – also to explore, explain and clarify
- Duty not just while the client is alive – survives death
- Duty not just to a client but to those who suffer foreseeable loss when their interest is aligned with the testator's intention
- ... and not just when estate has no claim
- Duty of care is to ensure that effect is given to testator's testamentary intentions – see *Corbett*, 2001 at [22]
- Duty in respect of the kind of loss



6

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Ensuring assets are owned by the testatrix(1 of 2)

- Failure to advise to take necessary steps:
 - Execute disentailing assurance – *Otter v Church*, 1953
 - Sever joint tenancy - *Carr-Glynn v Frearsons*, 1999
(claim by disappointed beneficiary, able to succeed even though loss to estate)



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Stage 1
Preparation for, and drafting of, the will

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Ensuring assets are owned by the testatrix(2 of 2)

- In contrast:
- No duty to disappointed beneficiary to advise testator that doing something uncommercial or ill-advised- *Clarke v Bruce Lance*, 1988
 - *Shah v Forsters*, 2017 – pros and cons of severance – no liability, no causation
 - *Matthews v Hunter*, 2008 — no claim unless negligence arose in making of will



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Scottish position

- **Matthews v Hunter & Robertson Ltd** [2008] CSOH 88
- Failure to evacuate survivorship destination – ie severance of tenancy – on divorce in 1975
- Mr U thus acquired one half share under Mrs U's will
- Act of omission occurred 3 decades before pursuer (executor nominate) was appointed
- Solicitors owed no duty to future executor – negligence did not arise in relation to the making of a will.



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Ensuring assets are not subject to tax

- **Daniels v Thompson**, 2004. Mrs D transferred home to son & lived for 7 years. Failure to advise that, if Mrs D remained resident rent-free, would be deemed to have reserved benefit
- Claimant was executor and beneficiary but brought claim in capacity of executor
- CA held that testatrix could not have suffered loss – Mrs D never at risk of paying inheritance tax
- If correct, frustrating testator's intention to pass asset tax-free does not give rise to liability (at least in a claim by estate)
- If case is authority for fact that no duty to estate or testatrix for imposition of inheritance tax, must be wrong.



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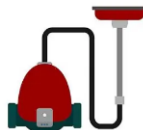


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Key Issues when Drafting Wills

- Who is one's client/ to whom is duty owed?
- Nature (and law) abhors a vacuum
- Disappointed beneficiaries and delay in preparing will – **White v Jones**, 1995
- Compare with existing beneficiaries – **Worby v Rosser**, 2000; **Dorey v Ashton**, 2023
- Why is there a lacuna in one but not the other?



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Claim by disappointed beneficiary, no valid will

- **Ross v Caunters**, 1980 – Solicitors who prepared a will and sent it for execution failed to warn T, the testator, that it should not be attested by a beneficiary's spouse. The will was attested by the residuary beneficiary's husband, and the gift of residue was therefore void.
- **Gartside v Sheffield, Young & Ellis**, NZ 1983
 - 89 year old woman contacted solicitors after she suffered a fall
 - She died before will – Jack Gartside got nothing. Estate given to sister under a previous will
 - Court held duty to beneficiary



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No will, alas – **White v Jones**, 1995

- Quarrel, testator executed will disinheriting P
- Reconciliation, instruction by testator to solicitors
- Lord Keith:
Upon the whole matter I have found the conceptual difficulties involved in the plaintiffs' claim, which are fully recognised by all your Lordships, to be too formidable to be resolved by any process of reasoning compatible with existing principles of law.
- Lord Goff:
If the solicitor owes no duty to the intended beneficiaries, there is a lacuna in the law which needs to be filled. This I regard as being a point of cardinal importance in the present case.



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Duty to carry out instructions with due expedition and care

- Depends on circumstances of the case
- Someone in combat – **Otter v Church**, 1953
- Someone age 89 – **Gartside**, 1983
- **Shah v Forsters**, 2017 – pros and cons of doing nothing



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Duty on advisers when uncertainty as to capacity or undue influence

- Depends on circumstances of the case
- Solicitor must refuse instructions or satisfy himself – see *Feltham v Freer Bouskell*, 2013
- Comply with golden rule
- Nothing is proof against a claim
- Capacity fluctuates – people have good and bad days
- Have a will meeting – invite family members but not alleged influencer



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Discussion on best way of avoiding disputes

Situation: family unhappy with new proposed will. Questions of capacity

Options:

- view from an independent solicitor and/or medic
- family meeting
- Question of recordings



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Previous beneficiaries – why in different situation to disappointed beneficiary

- *Worby v Rosser*, 2000 – plaintiffs were beneficiaries under earlier will
 - They disputed probate and sought to uphold
 - Only partial costs order
 - Mr Tuli not a man of means
 - CA held that no duty because no lacuna – estate (upon whom costs fell) could have brought a claim
- *Graham v Bonnycastle*, 2004 - Canadian case, similar facts and outcome



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Previous beneficiaries – again no lacuna

Dorey v Ashton, 2023

- Wills disadvantaged children compared with position on intestacy
- Proceedings to challenge validity of wills was compromised – validated but varied to children's benefit
- Children claimed for £375k paid to widow and costs of £146k
- Is a prior beneficiary claim wholly analogous to a proposed beneficiary claim
 - No lacuna – probate proceedings
 - In proposed beneficiary claim, interests of testator and beneficiaries are aligned
 - In prior beneficiary claim, they are opposed



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Stage 2 Post will / death

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Types of Claims 3 – Administration of estates

- Deeds of variation
- Removal of executors
- Delay in obtaining probate – **Chappell v Somers & Blake**, 2003 – loss of income. Court declined to strike out claim by executrix even though loss suffered by beneficiary



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Stage 3

Interaction between probate claims / rectification claims and professional negligence claims

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Interaction between different claims

- **Corbett v Bond Pearce** [2001] EWCA Civ 531
- Lengthy court saga from 1994 to 2006
- Later will held in probate proceedings to be invalidly executed
- Great nephews (who ultimately lost out) sued solicitors who settled – this was by reference to amount of net residuary estate of Testatrix *undiminished by costs of the Will action*
- Executor sued for costs of probate proceedings – if for benefit of beneficiaries under earlier will, solicitors owed no duty (disappointed beneficiaries not being affected by costs)
- Injustice of double recovery
- Presumably if great nephews' claim was reduced by costs (eg probate claim concludes that will valid), costs claim would be for benefit of beneficiaries

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Mitigation

- Bringing a rectification claim
- **Walker v Medlicott**, 1999
- **Bacon v Howard Kennedy (A Firm)**, 1999
- **Horsfall v Haywards**, 1999
- **Martin v Triggs Turner Bartons**, 2009 (rectification claim compromised)
- **Marley v Rawlings**, 2014 – appeal to Supreme Court – is that reasonable mitigation?



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Joining advisers to probate claims

- bind them to the judgment per CPR 19.3
- apply for a non-party costs order per CPR 46.2
- joining solicitors for costs orders common in probate matters
- compare other areas - *Shannan v Viavi*, 2016
- Might even allege failure to do this against previous advisers





Examples

- *Pead v Prostate Cancer*, 2023
 - application to join solicitors made after rectification granted
 - Master Teverson made a 60% costs order
- *Marley v Rawlings No 2* above
- *Ivey v Lythgoe*, 2025
 - Complicated series of interlocking claims
 - Application to join Trust Inheritance Ltd as costs-only party





Applicable concepts to other areas

- Other areas where disconnect of duty and loss
- Take-away points for claims by estate after death
- Issues of when claim is properly constituted





Thank you

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Otter v Church, Adams, Tatham & Co [1953] Ch 280
Ross v Caunters [1980] Ch 297
Gartside v Sheffield, Young & Ellis [1983] NZLR 37
Clarke v Bruce Lance [1988] 1 WLR 881
Corbett v Newey & Ors [1994] Ch 388
White v Jones [1995] 2 AC 207
Corbett v Newey & Ors [1998] Ch 57
Carr-Glynn v Frearsons [1999] Ch 326
Worby v Rosser [1999] Lloyd's Rep. PN 972; [2000] PNLR 140
Walker v Medlicott [1999] 1 WLR 727
Bacon v Howard Kennedy [1999] PNLR 1
Horsfall v Haywards [1999] 1 F.L.R. 1182



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List of Cases 2 of 3

Corbett v Bond Pearce [2001] EWCA Civ 531; [2001] PNLR 31
Chappel v Somers & Blake [2003] EWHC 1644 (Ch)
Graham v Bonnycastle (2004) 243 D.L.R. (4th) 617
Daniels v Thompson [2004] EWCA Civ 307; [2004] PN.L.R. 33.
Corbett v Bond Pearce (a firm) [2006] EWHC 909 (Ch); [2006] W.T.L.R. 967
Matthews v Hunter & Robertson Ltd [2008] CSOH 88
Martin v Triggs Turner Bartons [2009] EWHC 1920(Ch); [2010] PN.L.R. 3
Feltham v Freer Bouskell [2013] EWHC 1952
Marley v Rawlings (No 2) [2015] AC 157 SC



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List of Cases 3 of 3

Shannan v Viavi [2016] EWHC 1530 (Ch)
Shah v Forsters LLP [2017] EWHC 2433 (Ch). [2018] PNLR 8
Re Kelly (Deceased) [2020] EWHC 245 (Ch); [2021]W.T.L.R. 613.
Dorey v Ashton [2023] PNLR 19
Pead v Prostate Cancer [2023] EWHC 3224 (Ch); [2024] PN.L.R. 13
Lonsdale v Wedlake Bell LLP [2024] EWHC 712 (KB)
Ivey v Lythgoe [2025] EWHC 2325 (Ch)



William Godwin KC
3 Hare Court

*“Claims notification and issue-based costs awards
– the continuing impact of HLB Kidsons v Lloyds
Underwriters and Others [2009] Lloyds Rep IR 8 (CA)”*

William Godwin KC

Call Date: 1986 | Silk Date: 2017



as an arbitrator and adjudicator.

Chambers UK have described him as '*an outstanding advocate*' and UK Legal 500 as '*very bright and experienced, providing detailed analysis of issues*', '*an expert on FIDIC contracts and related arbitration*', with '*very strong analytical skills and attention to detail*' and '*good credentials in the arbitration communities of China and Asia*'.

William is a graduate of University College London (First class) and Oxford University (BPhil, DPhil/PhD)) and author of numerous publications on commercial, construction and arbitration law. He is proficient in German. From 2014-21 William was a board member of the Great Britain China Centre. He is a Bencher of the Middle Temple.

Legal Services

Commercial

William acts and advises in a wide range of commercial disputes, including shipping, insurance and commercial professional liability.

Illustrative cases include acting for Indian buyers of breeding poultry from US sellers under a sales right agreement in challenge proceedings to an ICC award raising issues of US state and federal law, New York Convention issues and co-ordination of US and London proceedings; acting for Chinese metal traders in LCIA arbitration concerning supply of alumina in breach of UN/US sanctions; acting for Chinese charterers in Hong Kong ad hoc arbitration arising from voyage charters for commodities shipments from Australia to China; and in HKIAC arbitration for Chinese pharmaceutical company in claims arising from a share sale agreement. Other cases include acting for German industrial group in substantial and complex English Commercial Court proceedings arising from acquisition debt push down in 15 jurisdictions following private equity buy-out and restructuring involving conflicts of laws, German corporate law and law of succession and Mexican tax advice; and appearing for the policy-holder accountants against insurers in the landmark decision in *HLB Kidsons v Lloyds Underwriters and Others* [2009] Lloyd's Rep IR 8 (CA).

Construction Law

William acts and advises in construction disputes of all kinds, including off-shore and shipbuilding cases and professional liability of engineers, architects and others.

His extensive experience covers both international and UK projects and he is an accredited adjudicator and arbitrator of the English Technology and Construction Bar Association. He has particular expertise in FIDIC contracts and was legal member of the FIDIC Updates Task Group responsible for drafting the second edition of the FIDIC Red, Yellow and Silver Books. In 2020 Wiley Blackwell published his guide to the new contracts, *The 2017 FIDIC Contracts: the Second Editions of the Red, Yellow and Silver Books*.

Illustrative cases include acting for French joint venture contractors in arbitration concerning EPC contract for container terminal project in North Africa and advising same client on nuclear containment works project in Ukraine; acting for UK engineering contractors in arbitration concerning nuclear power plant works in Wales; acting in claims by state-owned Chinese group arising from port expansion project in Ghana; acting in LMAA arbitrations defending Chinese shipyard and finance house in claims for late delivery in respect of multiple chemical tanker new build contracts; and advising contractors on hospital development project in Saudi under an EPC/turnkey contract. Other cases include acting for UK architecture practice pursuing arbitration claims arising from projects in UAE and a cultural centre project in Jordan and advising central European transport authority in dispute review board claims arising from urban transport project under a design-build contract.

International Arbitration

William has very substantial experience of international arbitration, including institutional and ad hoc commercial, technical and construction arbitrations, and serves as an arbitrator under ICC and other rules. He also serves as adjudicator.

William has written widely on arbitration law and teaches a class on dispute resolution at City, University of London; he has also taught on Chinese arbitration at the School of Oriental and African Studies, London. His cases as counsel include a number of important arbitration law decisions, most notably *North Range Shipping Ltd v Seatrans Shipping Corp (The Western Triumph)* [2002] 2 Lloyd's Rep 1 (seminal decision on reasons in leave to appeal applications under s 69 Arbitration Act 1996) and *Peterson Farms Inc v C&M Farming Ltd* [2004] 1 Lloyd's Rep 614 (first reported decision on power under s70(7) Arbitration Act 1996 to secure award pending appeal or challenge).

Arbitrations in which William has acted as counsel include acting for Russian shipping corporation defending UNICTRAL arbitration claims by European bank on parent company guarantee raising Russian and English company law issues; acting in LCIA arbitration for Italian receivers in jurisdiction challenge involving the European Insolvency Regulation, Italian and English law; acting for Chinese charterers in substantial LMAA arbitration defending claims by Korean disponent owners for damages for breach of contract of affreightment; acting for Chinese charterers facing various claims arising out of five C/Ps in LMAA arbitration; and acting for contractors in arbitration claims arising from a hydro project in the Balkans.

HLB KIDSONS (A FIRM) v LLOYD'S UNDERWRITERS

Claims Notification and Issue-Based Costs Awards

The Continuing Impact of HLB Kidsons

William Godwin KC

© William Godwin

1

Kidsons: a contest about notification

The insured

HLB Kidsons, a mid-size national firm of chartered accountants

The cover

Professional indemnity, claims-made basis, 1 May 2001 to 30 April 2002

The claims

Client claims over tax avoidance schemes marketed by S@FL Kidsons' tax-planning subsidiary

2

General condition 4

"The Assured shall give to the Underwriters notice in writing as soon as practicable of any circumstance of which they shall become aware during the period specified in the Schedule which may give rise to a loss or claim against them. Such notice having been given any loss or claim to which that circumstance has given rise which is subsequently made after the expiration of the period specified in the Schedule shall be deemed for the purpose of this Insurance to have been made during the subsistence hereof."

3

The presentations and Gloster J’s decision

- Kidsons relied on four presentations made between September 2001 and July 2002.
- The first presentation consisted of a letter dated 31 August 2001. That read as follows:
"....The products marketed by S@FI have all been validated by virtue of Counsel's opinion (in some cases two opinions) but a tax manager in Edinburgh, Iain Torrance, has expressed the view that the Inland Revenue, if minded, could be critical of some procedures followed in certain cases.
The Board of S@FI and the National Executive Committee of HLBK intend to investigate this view fully ... and submit a report.
The Board has taken the view that this might be regarded as material information for insurers. There is no sign of a claim arising at the present time but the Board feels that it is appropriate in the circumstances to advise what is happening and to take your instructions."

4

- The second presentation was made in October 2001 and consisted of the 31 August letter and additional documents which went into a claims file / bordereaux forwarded by brokers to underwriters.
- Gloster J decided [2007] EWHC 2699 (Comm) that the first and second presentations were too vague to be effective notifications under GC4. To the reasonable recipient the documents presented were insufficiently clear and unambiguous; there was no identification of any error, act or omission, or possibility of any claim; and there was no identification of any products or procedures.

5

- Gloster J decided that the third presentation (made in April 2002) was an effective notification of circumstances, but was limited to problems with the implementation of one particular product only (discounted option schemes). The fourth presentation (in July 2002) was made too late to be effective.
- Kidsons appealed.

6

Court of Appeal

- Agreed with Gloster J that the GC4 requirement to give notice as soon as reasonably practicable was a condition precedent to underwriters' liability.
- Rejected underwriters' argument that awareness for purposes of GC4 implied insured's belief that circumstances existed that carried the real possibility of a claim's being made – awareness required merely envisaging that there might be a claim.
- Upheld the appeal (Rix and Toulson LJ) to the extent of allowing that the second presentation was a valid and effective notification of circumstances. The test was to ask what the presentation reasonably conveyed to the recipient. It was an objective test.

7

- Though vague the documents were objectively received as a notification of circumstances; GC4 did not stipulate how a notification had to be made other than that it was to be made in writing; and no great specificity was required.
- On the facts the second presentation was not limited to implementation problems with one product only but covered implementation of the schemes generally – though not their underlying validity; such claims were not covered.
- The third presentation was merely an update on the second; and the fourth was too late.

8

Points from the Court of Appeal's decision

- Mere lack of detail or specificity is not itself a bar to the validity of a notification of circumstances. But vagueness should be avoided so far as honestly possible.
- Notification as soon as practicable following awareness of a circumstance is a condition precedent to cover.
- Insured should give timely and sufficient notice and it should be clear from the notice that the insured intends to trigger the cover.

9

After Kidsons

- Euro Pools Plc v Royal & Sun Alliance [2019] EWCA Civ 808. The court used Kidsons (and Kajima UK Engineering v Underwriter Insurance Company [2008] EWHC 83 (TCC)) to confirm the commercial point of notification of circumstances clauses like GC4 as providing an extension of cover for future claims that flow from the notified circumstance.
- Notifying a ‘can of worms’ or ‘hornet’s nest’ may be valid: insured does not need to know the cause or effects of the problem. Sufficient to notify a problem that could give rise to potential third-party claims; not necessary to know the cause of the problem or the consequences that might flow from it. The claims must relate back to the notified factual root.

10

Underwriters won overall. Kidsons won on some issues. Who is to pay and how much?

11

Starting point: who is the successful party?

The approach

- Costs follow the event, looking at the result as a whole
- The order should reflect the overall justice of the case
- Even a winner will usually fail on some issues
- No automatic reduction for losing on an issue

The result

- Kidsons accepted that underwriters had won overall
- Underwriters had made a Part 36 offer of indemnity for discounted option scheme claims
- No general discount for Kidsons’ success on certain issues

12

- Instead court disallowed about 11% of underwriters' costs in respect of two time-consuming issues on which they had failed or did not pursue.
- Kidsons and cases since underline practical importance of
 - Clarity: make it as clear as soon as possible (by e.g. explicit labelling) that a claim or circumstance is being notified.
 - Timing: establish internal triggers to ensure the claim or circumstance is notified as soon as practicable.
 - Sorting the litigation wheat from the chaff: the merits of pleaded points.

So in summary

For insureds

- Notify the circumstance in clear terms
- Send it to the claims function of every market
- Describe the circumstance as widely as the facts honestly allow
- Do it as soon as practicable

For insurers

- Respond promptly if a notification is thought defective
- Record how each market received the material
- Test the scope of the notification early as it decides which policy year responds

For litigators

- Make a realistic Part 36 offer early
- Review issues - weak or abandoned points can be costly
- Keep records to enable costs to be allocated by issue



Andrew Barns-Graham
3 Hare Court

*"Red Flags and Blind Spots:
Professional Negligence in Fraud Cases"*

Andrew Barns-Graham

Call Date: 2011



Andrew Barns-Graham specialises in **civil fraud litigation** and asset recovery, **banking and other commercial disputes**, shareholder disputes, and contentious **insolvency** and trusts.

His related areas of expertise include freezing injunctions, financial disclosure applications and asset tracing, securities fraud, forgery and counterfeiting, breach of confidence, breach of fiduciary duty, the cross-border enforcement of judgments and non-performing loans, jurisdiction challenges, and conflicts of laws.

Andrew has been recognised in the civil fraud category of the legal directories since 2022 and is currently ranked as a leading junior. He has published numerous articles about the subject and is a regular speaker at events.

He has acted in several of the most complex and high-profile cross-border fraud cases of recent years, including three which appeared in The Lawyer's annual 'Top 20 cases'. He also has a wealth of experience acting on smaller matters across the spectrum of civil fraud and commercial litigation.

Andrew prides himself on being a team-player who goes the extra mile for his clients. As well as being a "top drawer" and "very knowledgeable" technical lawyer, he has the ability to see litigation from the perspectives of solicitors and clients, having previously worked in-house in top City litigation practices.

Andrew's hobbies include sport, playing and composing piano music, and civil fraud litigation

Legal Services

Civil Fraud

Notable Civil Fraud cases

Your Ideal Ltd v Kumar

Acting for the claimant in a c.£2.5m case against a fraudulent former director. The case involves several of the key remedies in the civil fraud arsenal, e.g. a worldwide freezing order, proprietary tracing orders, an

3 HARE COURT

appointment of an insolvency practitioner, Norwich Pharmacal and Bankers Trust relief, and an order authorising the court to executed documents on the non-compliant defendant's behalf.

Pestrikov v Gutyn

Acting for the defendant in a case where the claimant alleges fraudulent misrepresentation and seeks damages of c.\$372 million. The defendant is challenging jurisdiction.

Search order case

Andrew acts for Pinsent Masons LLP as the supervising solicitor for search orders granted in a complex £18m fraud case arising from the collapse of an insurance company.

Skatteforvaltningen v Solo Capital Partners LLP & Ors.

Andrew is a member of a large counsel team acting for the Danish tax authority in a c.\$1.5 billion claim against c.90 defendants. The case relates to fraudulent applications for refunds of dividend withholding tax and has been described by the trial judge as "one of the most complex pieces of litigation in British history". Related civil and criminal proceedings are ongoing in the US, Malaysia, onshore Dubai, the DIFC, Denmark and Germany. There have been two trials of preliminary issues, including one relating to the 'revenue rule' which was recently decided in SKAT's favour by the Supreme Court. The main trial ran from April 2024 to April 2025. The case is in The Lawyer's Top 20 cases of 2024, having previously appeared in its list for 2021.

JSC Commercial Bank Privatbank v Kolomoisky & Ors.

Acts for the corporate defendants in a c.\$1.9 billion misappropriation claim brought by a state-owned Ukrainian bank against its former owners (Igor Kolomoisky and Gennadiy Bogolyubov) and six companies. The defendants succeeded in a jurisdiction challenge in 2018 but this decision was reversed by the Court of Appeal in 2019. The trial took place between June and November 2023 and judgment was handed down in July 2025. The case was included in The Lawyer's Top 20 Cases of 2022.

Alleged forgery / conspiracy case

Acting for four clients in defence of allegations that they conspired to forge evidence for use in employment tribunal proceedings and High Court litigation.

Miranda Investments Ltd & Ors v Abraham Dodi & Ors

Acting for defendants to a real estate development claim involving allegations of mismanagement and

misappropriation.

Section 423 claim

Acting for the defendants to a claim under section 423 of the Insolvency Act 1986 arising out of a judgment in a c. £13m tax fraud case.

Claim involving alleged inflation of contract prices

Acting for the former directors of a company who are accused of fraudulently diverting company funds via secretly arranged contracts with their companies at inflated rates.

Paul Girvan v (1) Paralaw (UK) Limited (2) British Telecommunications Plc

Acting for the first defendant in breach of contract and unlawful means conspiracy claims quantified by the claimant at over £10 million.

Secret commissions case

Acted in 2023/24 for the claimant on an NPO application in Singapore. Disclosure was obtained to assist a worldwide asset recovery effort arising out of payments of GBP millions of secret commissions by a former employee and suspected sales of confidential information to competitors. The case also involved related criminal proceedings in the Netherlands.

Confidential securities fraud action

Acted for the claimant in 2022/23 in a £multi-million securities fraud claim under FSMA s.90A. The claim was resolved at the pre-action stage.

Disclosure in relation to a counterfeiting operation

Acted for a US-based electronic cigarette company on disclosure applications aimed at identifying the manufacturers and distributors of harmful counterfeit versions of its product.

Cryptocurrency fraud

Acting for a cryptocurrency exchange in relation to contested allegations that it received the proceeds of a major fraud (valued at c. GBP 6 million).

3 HARE COURT

Acting on assigned fraud claims in an insolvency context

Acted for a claimant in a £multi-million shareholder dispute on fraud claims which were assigned during a liquidation process.

Investors in Cattles plc v Blake & Ors

Acted for a defendant to a c.£30m claim brought by investors in a subprime lender regarding misrepresentations in a rights issue prospectus. The case was due to become the first authority on FSMA s.90 until it settled shortly before trial.

National Bank Trust v Yurov & Ors

Acted for a defendant to a c.\$830m claim brought by a Russian bank arising out of a loan recycling scheme. The claim was included in The Lawyer's Top 20 Cases of 2017.

Shareholder dispute involving allegations of forgery and email collusion

Andrew acted for a shareholder in a dispute involving allegations of another shareholder's email forgery and collusion with company administrators in connection with an auction of the company following a pre-pack.

Commercial

Notable Commercial cases

China Triumph International Engineering Co Ltd v WELink Global Limited & Ors

Acting as sole counsel for the defendants in a c.£20m claim brought by a Chinese state-owned entity arising from the construction of solar energy projects across the UK & Europe.

Banking & Financial Services

Notable Banking & Financial Services cases

Sanctions advice

Acting for trust service providers on the impact of Russian sanctions on their customer and banking

arrangements, analysing the scope of their termination rights, the enforceability of contractual obligations, and the practical routes to recovering outstanding debts.

JSC Commercial Bank Privatbank v Kolomoisky & Ors

Acts for the corporate defendants in a c.\$1.9 billion misappropriation claim brought by a state-owned Ukrainian bank against its former owners (Igor Kolomoisky and Gennadiy Bogolyubov) and six companies. The defendants succeeded in a jurisdiction challenge in 2018 but this decision was reversed by the Court of Appeal in 2019. The trial took place between June and November 2023 and judgment was handed down in July 2025. The case was included in The Lawyer's Top 20 Cases of 2022.

Acted for a bank as secured creditor

Acted in 2023 for a bank which sought to collect a debt from a corporate group by enforcing its security rights and appointing administrators to the group. The main shareholder of the group responded by making numerous serious allegations against the bank and by threatening retaliatory action.

Strike-out of a £300m claim

Acted for a bank and several of its employees who were the subject of a spurious £300m Part 8 claim brought in the County Court by a disgruntled former customer. Andrew's team obtained orders striking out the claim and requiring the claimant to pay the bank's costs on the indemnity basis, along with a general civil restraint order which prohibited the claimant from making any further claims against anyone without first obtaining the court's permission.

Aldermore Bank plc v Lynch

The bank was found at first instance to have forged a personal guarantee. Andrew did not act at first instance but he was part of a team which was instructed to pursue the appeal, which succeeded in December 2022.

Insolvency and Trusts

Notable Insolvency and Trusts cases

Stalo Michael v Mario Michael

Acting for a group of property investment companies in response to claims/applications brought by receivers in a c.£15m divorce case involving alleged uses of sham corporate structures to evade enforcement of judgment debts.

3 HARE COURT

Insolvency Act claims

Acting for a trustee in bankruptcy in relation to cross-border claims of transactions at an undervalue and transactions to defraud creditors.

Acting in bankruptcy matters

Andrew regularly appears in bankruptcy proceedings for a range of clients.

Administration of the Carlauren Group

Andrew acted for a large group of investors in relation to their investments in an alleged c.£80m Ponzi scheme. His clients' application to appoint administrators to the group was successful. The case made front-page news in 2024 following a raid by the SFO.

Confidential insolvency matter

Advising the liquidators of a corporate group on the appropriate strategy for an ongoing high-profile insolvency involving political sensitivities and cross-border recovery issues.

Acted for a bank as secured creditor

Acted in 2023 for a bank which sought to collect a debt from a corporate group by enforcing its security rights and appointing administrators to the group. The main shareholder of the group had responded by making numerous serious allegations against the bank and by threatening retaliatory action.

Acting on assigned fraud claims in an insolvency context

Acted for a claimant in a £multi-million shareholder dispute on fraud claims which were assigned during a liquidation process.

Shareholder dispute involving allegations of forgery and email collusion

Andrew acted for a shareholder in a dispute involving allegations of another shareholder's email forgery and collusion with company administrators in connection with an auction of the company following a pre-pack.

'Trustbusting' claim in Nevis

3 HARE COURT

Acted in the 'trustbusting' of a Nevis trust with assets totalling c.US\$200m (proceedings held in camera).

Other

- Professional negligence claims against a company's former accountants for failing to detect and prevent thefts by its former bookkeeper.
- Acted for an international transport company in a €23m banking dispute.
- An arbitration between two pharmaceutical companies involving alleged breaches of warranty in an asset purchase agreement.
- A \$32m confidentiality dispute between two private equity firms.
- Acted for a Saudi oil company in fraud claims arising out of a failed joint venture for the construction of oil rigs.
- Acted on applications relating to the Yukos Oil global litigation.
- Currently acting in two trademark infringement matters.

Accreditations



Publications

-
- The "[Mareva at 50](#)" series of articles to commemorate the 50th anniversary of Lord Denning's seminal decision on freezing injunctions (co-authored with Andrew Ayres KC, with a foreword by Sir Bernard Rix)
 - "[Is it time to amend the tort gateway?](#)", New Law Journal, 4 March 2022

- “De-risking causes of action”, STEP Magazine, 1st Issue of 202
- Numerous articles on the Out-Law website

Memberships

- Commercial Bar Association
- Commercial Fraud Lawyers Association
- Thought Leaders 4 FIRE (Fraud, Insolvency, Recovery, Enforcement)
- STEP (Society of Trust and Estate Practitioners)

Education

- City University (Graduate Diploma of Law, Outstanding)
- University of Oxford (Classics, Double First)

Awards

- Scholar of the University of Oxford
- Four scholarships with Lincoln’s Inn (Lord Denning, Lord Eldon, Hardwicke, Shelford)

Privacy Notice

[Click here](#) to view Andrew Barns-Graham’s Privacy Notice

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



**Peter Nussey & Andy Butler
Solomonic**

“Professional negligence: what the data tell us”



Solomonic

Peter Nussey, CRO – e: pnussey@solomonic.co.uk

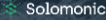


Pete has 20 years of experience within the legal technology sector where he has held a number of growth roles and gained extensive experience of scaling pioneering solutions. He spearheads our expansion plans aimed at putting Solomonic at the heart of litigation decision making.

Andy Butler – e: abutler@solomonic.co.uk



Experienced salesperson with a demonstrated history of working in the legal, legal-tech, & SaaS industry. I enjoy bringing solutions to problems.



Solomonic, Litigation Intelligence

"...if every enterprise in the non-legal world wants to have data and regards it now as invaluable for the making of decisions, why are some lawyers, and probably most barristers, so reluctant to invest in proper data analysis?"

PJ Kirby KC, "Data... what is it good for?" Counsel Magazine - September 2023

October 2026

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The availability of data transforms behaviour

Data has transformed decisions in other sectors:

- Finance: data-driven, credit risk models
- Insurance: underwriting/risk modelling
- Retail: demand forecasting

Litigation is now following the same path

- 12+ years of structured High Court data
- Litigation leaders log in every 7 minutes
- More than 12,500 platform users
- Used by 60% of the top 50 UK law firms

Not everyone is working with the same information

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Litigation activity is difficult to see, analyse & benchmark

Litigation decisions are made with limited visibility because

- High Court capability is limited
- Data incomplete & unclassified
- Replaced with anecdote & bias

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- Unseen risk
- Incomplete strategy
- Inferior outcomes
- Unsatisfied stakeholders

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4

What does that look like as data?

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End-to-end capture and tracking

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graph TD; A[Claim issued] --> B[Acknowledged]; B --> C[Settlement]; C --> D[Permission to Appeal]; D --> E[Appeal]; E --> F[Judgment]; F --> G[Activity]; G --> H[Served]; H --> A;
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Why do clients use Solomonic?

Market Intelligence/BD

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- Pitch
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New opportunities

Claim Strategy

- Use outcomes data to inform approach
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- Manage expectations using data

Enhanced client outcomes

Knowledge & Research

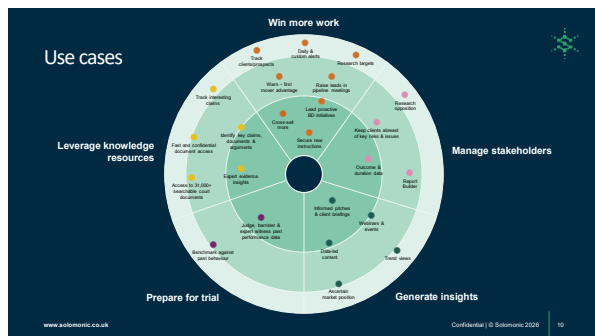
- Monitor documents (e.g., defence)
- Capture and share insights
- Track emerging trends

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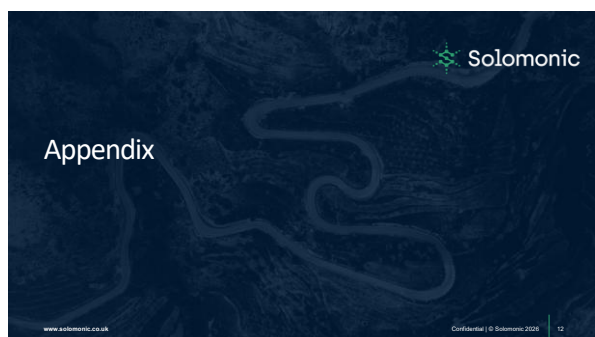
9



10



11



12

Find and track more opportunities



“
Solomonic's unparalleled market intelligence brings a level of precision and insight that is indispensable at every stage of litigation. It has not only helped our firm win new significant instructions but also brings a new dimension of value for our clients. Without Solomonic research we would have missed those opportunities.
”

Jonathan Sacher, Partner & Co-Head (Insurance), BCLP

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Win new instructions



“
Solomonic has paid for itself many times over, just in terms of winning new work, never mind its many other applications. In one recent instance, we were able to contact an existing client to alert them to a claim. This early intervention ultimately won us the work.
”

Amanda Wadey, Head of Practice Development – Commercial Disputes, RPC

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Unique analysis and insight



“
All of a sudden, I'm tracking 40 actions in the Commercial Court that I care about and so is all the team. That's a very different feeling of engagement.
”

Alexander Oddy, Partner, Dispute Resolution, Herbert Smith Freehills LLP

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	Cases	Judgments
Business & Property Division		
Administrative Court		
Commercial Court		
Financial List		
Insolvency		
Patent Court		
Prerogative Court		
Property, Trusts and Probate List		
Recovery List		
Technology and Construction Court		
Business & Property Appeals		
Insolvency and Companies List		
Intellectual Property List		
King's Bench Division		
General Kings Bench		
Kings Bench Appeals		
Trade and Communications List		
Personal Injury		
Official Assignee		
Admiralty List		
Civil Appeals		
Administrative, District, Circuit, County, Queen's Bench, Technology, Trade Marks, Appeals		
Other courts and tribunals		
Competition Appeal Tribunal		
Upper Tribunal (Lands Chamber)		
County Court		
Appeals		
Court of Appeal (Civil Division)		

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Recent press

Grenfell's £1.2bn legal legacy – Financial Times
[https://www.ft.com/content/4d088758-d853-484a-8e6d-0413a39212a3?](https://www.ft.com/content/4d088758-d853-484a-8e6d-0413a39212a3?utm_source=share&utm_medium=link)

Who's Acting On The Biggest UK Cases So Far in 2026? – LAW.COM
<https://www.law.com/international-edition/2026/08/19/whos-acting-on-the-biggest-uk-cases-so-far-in-2026/>

Britons are increasingly tussling over inheritance – The Economist
<https://www.economist.com/britain/2026/07/23/britons-are-increasingly-tussling-over-inheritance>

Crypto Disputes Report 2026 – CMS
<https://cms.law/en/gbr/publication/crypto-disputes-report-2026>

Solomonic Year in Review 2025
<https://www.solomonic.co.uk/year-in-review-2025-download>

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**Piers Elliott & Daren Hlaing
Henderson and Jones**

*“Case Studies of Assignments in Professional
Negligence Claims”*

HENDERSON & JONES



Piers Elliott - Managing Director

– e: piers@hendersonandjones.com

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

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

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



Daren Hlaing - Legal Director

– e: daren@hendersonandjones.com

Daren is a commercial litigator specialising in insolvency, financial services and professional negligence disputes. Daren has extensive experience of litigation claims in the High Courts of England and Wales and has expertise in insolvency, fraud and asset-tracing.

Daren joined Henderson & Jones in January 2024 from Ernst & Young LLP's in-house counsel team, where he advised the firm's audit and assurance practices. Prior to that, Daren spent 10 years in Freshfields' dispute resolution department where he advised on a range of complex, high-profile matters. Daren is admitted as a solicitor in England and Wales.



1



What we do

- H&J is a litigation investment company that purchases litigation and arbitration claims
- We typically invest in claims of between £1m and £30m in value. But no strict upper or lower limits.
- Current portfolio of over 120 claims. With over 100 claims under review
- Significant expertise in Professional Negligence disputes. But also invest in other areas.
- No strict documentary requirements or form to complete.
- Merits / Quantum / Recoverability.



2



How Assignment Works

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



3

Assignment v Funding

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



4

Case Study 1 - Auditors

- Large family-run grain trading company
- Material stock discrepancy discovered upon insolvency.
- Long standing audit relationship, former client partner had died.
- £80m deficit to creditors upon insolvency. Largely attributable to missing stock.
- Referred to H&J at a very early stage.
- Worked with solicitors and experts to work the case up and commence proceedings.



5

Case Study 2 - Solicitors

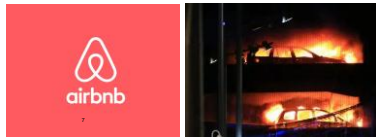
- Negligence claim against multiple firms of solicitors who successively provided negligent advice to owner of company
- Owner lost their interest in the company which went insolvent
- Referred to H&J by solicitors acting for claimant. Total claims of £[Xm].
- Claim issued days after assignment of claims to H&J. H&J funded proceedings including three sets of expert reports
- Settlement achieved weeks before trial



6

Case Study 3 - Insurance Broker

- Significant fire at car park of the Liverpool Echo Arena in 2018
- Assignor owned two apartment blocks adjacent to the arena.
- Claim brought under insurance policy for property damage and loss of income.
- Insurers refused coverage in respect of the majority (£2.7m) of the loss of income claim.
- Claim brought against Insurance Brokers for failing to put proper insurance in place.
- Settled prior to trial.



7

Case Study 4 - Health & Safety Consultants

- Biodigestion plant engaged experts to produce a DSEAR (Dangerous Substances and Explosive Atmospheres Report)
- Subsequent to the report, two workers carried out maintenance work on a buffer tank using an angle grinder.
- Sparks from the angle grinder ignited flammable gas inside the buffer tank and caused an explosion.
- Gas was not anticipated in the area as it was not marked as being a risk in the DSEAR report.



8

Case Study 5 - Legionella Control

- Historic hotel in Ludlow, Shropshire
- Commissioned a report into legionella risk and engaged plumbing experts to deal with the risks identified.
- Work conducted actually exacerbated the risk.
- Two people seriously injured - one fatally.
- Hotel went into insolvency.
- Claims issued. Settled prior to trial.



9

Questions?



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Managing Director

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Daren Hlaing
Legal Director

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10

10



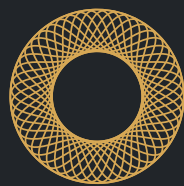
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11



Elaine Palser & James Smith
Outer Temple Chambers

"Negligence Claims in Insolvency"



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Elaine Palser

Year of Call: 2002

Direct Access: No

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Elaine Palser has an extensive chancery and commercial practice, with an emphasis on **contentious trusts and probate**, **insolvency**, **commercial disputes** and **professional negligence**.

Ranked as a leading barrister in the **Legal 500**, **Chambers and Partners**, and the **High Net Worth Guide**, the directories describe Elaine as *"fiercely bright"* and *"technically brilliant"*, with *"fantastic analytical skills"*, *"a sharp mind"*, and *"astute intellect"*. In court, Elaine is *"an excellent advocate"*, *"unflappable"*, *"calm and skilled"*, and *"impressive at pulling complicated issues together in a way that impresses a judge"*. She is also *"a real team player"* who is *"effortlessly charming"*, *"brilliant with clients"*, and *"able to give advice on tricky issues in a language her clients understand"*. Recommended for Private Wealth and Probate, Professional Negligence, Insolvency, and Traditional Chancery, Elaine is also described in the directories as a *"legal gladiator"*, a *"silent assassin"* and one of those counsel that *"you feel reassured to have on your side"*.

With degrees in both law and business science, Elaine is uniquely placed to handle the complex commercial and financial issues that arise in all of her practice areas.

Elaine is also a former lecturer in Trusts, Land, and Tort at Oxford University, and a CEDR-accredited **mediator** who is able to mediate disputes in most areas of law.

Areas of Expertise

Insolvency & Restructuring

Elaine Palser's insolvency practice covers:

- corporate and personal insolvency;
- related professional negligence;
- insolvency claims containing a trusts dimension; and
- commercial and contractual disputes arising within the insolvency context.

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Elaine is “a tenacious advocate”, “very analytical”, “technically excellent”, and “very astute and commercial” (Legal 500). She is “clearly an expert in her field” and “a top choice for professional negligence claims against insolvency practitioners” (Legal 500). Elaine is recommended as a leading barrister for insolvency, as well as for her crossover specialisms of trusts and professional negligence.

With degrees in both law and business science, Elaine understands businesses and is well placed to deal successfully with the complex commercial and financial issues that arise in insolvency cases.

Notable Insolvency & Restructuring cases

Acting for a trustee in a claim alleging negligence in the sale of a substantial French property: *McFadzean v Martinez* [2026] EWHC 426 (Ch).

Advising on corporate insolvency issues arising out of the demise of various businesses, including a major construction company, a pop group, and a school.

Advising the trustees of a substantial family trust on issues arising out of the bankruptcy of one of the beneficiaries.

Acting for stylist and influencer, Caroline Stanbury, in a long-running claim about director duties and personal goodwill: *Reynolds (as liquidator of CSB123 Ltd) v Stanbury* [2021] EWHC 2506 (Ch).

Acting for a publicly-listed company in an urgent application in private for an injunction to restrain advertisement of a winding up petition and to strike it out as an abuse of process.

Acting for the neutral trustee in bankruptcy in two connected multi-million pound appeals against the admission of a proof of debt, involving the construction and interpretation of several agreements: *Claims Direct Plc (in liquidation) v Hinton* [2021] EWHC 1613 (Ch) and *Poole v Hinton* [2019] EWHC 2331 (Ch).

Acting for an Italian judgment creditor in a multi-million pound appeal against the registration of an Italian judgment in England, forming the basis of a subsequent bankruptcy petition: *Percival v Motu Novu* [2019] EWHC 1391 (QB).

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Acting for a trustee in a claim involving the exercise of a trust power of revocation so as to reclaim properties in several jurisdictions for the bankrupt estate, and related freezing injunction applications.

Acting for a trustee in bankruptcy in a claim involving sham trusts, transactions at an undervalue, and transactions defrauding creditors.

Securing the dismissal of a winding up petition against a company on the basis that the debt was disputed on bona fide and substantial grounds: *Re a Company* [2016] EWHC 1046 (Ch).

Securing the dismissal of a winding up petition against a company on the basis that the debt was disputed on bona fide and substantial grounds: *Re a Company* [2016] EWHC 1046 (Ch).

Acting for a liquidator in a claim by a former high profile tax advisor for alleged conspiracy, abuse of process, and malicious prosecution of civil proceedings.

Acting for several sports clubs in insolvency matters, including Cardiff City Football Club.

Professional Negligence

Elaine Palser has a broad professional negligence practice, with an emphasis on claims arising out of her main practice areas, namely insolvency, probate, and trusts, e.g. claims against insolvency practitioners, directors, executors, administrators, trustees, and lawyers.

"Clearly an expert in her field", Elaine is "very efficient" and "thorough", with "great technical ability" in professional negligence law (Legal 500). She is recognised as "a top choice for professional negligence claims against insolvency practitioners" (Legal 500), and is recommended as a leading barrister for professional negligence, as well as insolvency, private wealth and probate, and traditional chancery.

Notable Professional Negligence cases

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Acting for the respondent in a Companies Act application to extend the limitation period for bringing professional negligence claims: *Francis v Silver Law LLP* [2026] EWHC 2191 (Ch).

Acting for a trustee in a claim alleging negligence in the sale of a substantial French property: *McFadzean v Martinez* [2026] EWHC 426 (Ch).

Acting for a trustee in a claim by beneficiaries that a trust had not been properly constituted and that property had not been assented: *Hilton v Woolfe* [2025] EWHC 2285 (Ch).

Acting for the claimants in a claim against a leading firm of solicitors for failing to advise and act upon a deadline in a commercial agreement.

Acting for a child and the new executors in a claim against an executor who negligently distributed the deceased's estate to the wrong parties: *Re K* [2022].

Acting for stylist and influencer, Caroline Stanbury, in a claim about director duties, alleged negligence, and personal goodwill: *Reynolds (as liquidator of CSB123 Ltd) v Stanbury* [2021] EWHC 2506 (Ch).

Acting for the former administrators in a paragraph 75 misfeasance claim by the liquidator of a company claiming disposal of assets at an undervalue.

Acting for LPA receivers against a mortgagor alleging a sale at an undervalue of commercial and residential premises.

Acting for a large professional body in a negligence dispute involving insolvency bonds.

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Acting for the trustee in a multi-million pound claim by his father for an account in light of breaches of trust spanning several decades.

Acting for a beneficiary in a claim that a deed of variation was negligently drawn up, necessitating rectification.

Acting for a beneficiary in a dispute over whether payments of capital ought to have been made out of a settlement.

Advising professional indemnity insurers on a potential multi-million pound claim arising from hundreds of defective appointments of LPA receivers.

Memberships

- **STEP** (Society of Trust and Estate Practitioners)
- **ACTAPS** (Association of Contentious Trust and Probate Specialists)
- **ConTrA** (Contentious Trusts Association)
- **ChBA** (Chancery Bar Association)
- **COMBAR** (Commercial Bar Association)

Publications

- "Twists and Turns in Proprietary Estoppel" [2023], ACTAPS newsletter, April 2023.
- "Proprietary estoppel and the position of the stranger" [2023] *Trusts and Trustees*, Vol 29, No 3, pp1-11.
- "Caution for liquidators and resounding success for director in breach of duty claim" [2021], LexisNexis Legal News, 8 October 2021.
- "Remote Mediation: The New Normal and the Future" [2020] ACTAPS newsletter, July 2020, and *OTC Insights*.
- "The super power of the revocable discretionary trust" [2019] *Corporate Rescue and Insolvency*, August, 145.
- "The court's approach to claims against an estate by a cohabitee" [2018] Lexis Nexis Legal Analysis, 13 Sept 2018.
- "Bold Petitioning Creditors Beware" [2016] Lexis Nexis Case Analysis, 8 June 2016.
- "A trust by any other name" [2015] *New Law Journal*, 23 October, 15.
- "Costly consequences: who bears the costs of statutory demands?" [2015] *New Law Journal*, 22 May, 18.
- "Appointment of Administrators Out of Court: Clarity at Last?" [2012] *Insolvency Intelligence* 25(8) 113.
- "Appointing administrators out of court: validity problems and retrospective administration orders" [2011] *Insolvency Intelligence* 24(8) 113.
- "The duty of care in gross negligence manslaughter" (with Jonathan Herring) [2007] *CLR* 24 (described by the Court of Appeal in *R v Evans* [2009] *EWCA Crim* 650 as "an illuminating analysis").

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Awards

- Outstanding Expertise in Commercial and Chancery Law 2020, Women in Law Awards
- Contentious Trusts and Probate Lawyer of the Year 2017, Women in Law Awards
- Contentious Trusts and Probate Lawyer of the Year 2016, Women in Law Awards
- Commercial Disputes Barrister of the Year 2015, the Lawyer Monthly Awards
- Highly Regarded in Insolvency Law – UK 2015, Corporate LiveWire Awards
- Outstanding Expertise in Contentious Trusts and Probate 2015, Women in Law Awards
- MA (Oxford)
- MA (Cambridge)
- BBusSc (Cape Town)

Recommendations



Outer Temple Chambers



Privacy Policy

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

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Outer Temple

NEGLIGENCE CLAIMS IN INSOLVENCY

Elaine Palser & James Smith

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1



Outer Temple

INSOLVENCY UNDERVALUE CLAIMS

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2



Outer Temple

s.305(2) Insolvency Act 1986 (bankruptcy)

The function of the trustee is to get in, realise and distribute the bankrupt's estate and, in the carrying out of that function, the trustee is entitled to use his own discretion.

s.143(1) Insolvency Act 1986 (liquidation)

The functions of the liquidator of a company which is being wound up by the court are to secure that the assets of the company are got in, realised and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it.

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Why might there be an undervalue sale?



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McFadzean v Martinez [2026] EWHC 426 (Ch)

- C made bankrupt in 2018.
- D1 and D2 appointed trustees in bankruptcy.
- Main asset = substantial French Riviera plot



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Quick sale

- Planning permission about to expire.
- Ds sold quickly for €3.5m.
- Buyer saved permission, built a villa, and sold for €11.6m.
- Bankrupt alleged negligence.



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s.304(1) Insolvency Act 1986

Where the trustee has **misapplied, retained, or become accountable for**, any money/property comprised in the bankrupt's estate OR

Where the bankrupt's estate has **suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty** by a trustee of the estate in the carrying out of his functions

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- the court **may** order the trustee,
- for the benefit of the estate,
- **to repay, restore or account for money or other property** (plus interest) or
- to pay such sum by way of **compensation**
- in respect of the misfeasance or breach of fiduciary or other duty
- as the court thinks **just**.

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Hurdle 1: Standing (s.304(2))

- a trustee
- a creditor
- the bankrupt

Hurdle 2: Leave (s.304(2))

The court's leave is required if application is made:

- by the bankrupt OR
- after the trustee has had his/her release under section 299.

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Test for leave

Brown v Beat [2002] B.P.I.R. 421

McGuire v Rose [2014] BPIR 650 (CA)

1. Reasonably meritorious cause of action
AND
2. Reasonably likely to result in a return to the insolvent estate
3. And, if yes to 1 and 2, any other relevant circumstances (delay, vexatiousness, costs)



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McFadzean: lack of expert evidence

- No valuation evidence for sale date.
- No French planning law evidence to show what was required to preserve planning permission and the costs.
- No French law evidence to show whether sale could have been set aside, the prospects, and the costs.

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Substantive test

- The duty on the trustee is to take reasonable steps, to the standard of an ordinary, reasonably skilled and careful insolvency practitioner, to obtain a proper price for assets within the estate.
- Where a trustee has used his discretion, e.g. in the exercise of his commercial judgment, or in the conduct of negotiations, acting as a prudent businessperson, then short of "bad faith, fraud or perversity", the court will afford generous latitude.

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No negligence in McFadzean

- Sale price in range of valuations and other offers.
- Marketing approach justified (timing, insolvency).
- Took advice (valuations, architect, legal).
- Not required to carry out any planning works.
- Negotiations a matter of commercial judgment.
- Reasonable to accept highest unconditional offer in time set.
- Reasonable not to try to set aside.

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Tips for claimants

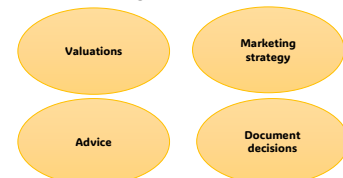


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Tips for respondents

When considering sale of an asset:



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Tips for respondents

Once a claim is contemplated/issued:



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Some helpful authorities

- Brown v Beat [2002] B.P.I.R. 421
- Hellard v Michael [2009] EWHC 2414 (Ch)
- Chapper v Jackson [2012] B.P.I.R. 257
- McGuire v Rose [2014] B.P.I.R. 650
- Oraki v Bramston [2015] EWCH 2046
- Borodzicz v Horton [2016] B.P.I.R. 24
- Re One Blackfriars Limited [2018] EWHC 901 (Ch)
- Cassanova v Cockerton [2021] EWHC 1688 (Ch)
- McFadzean v Martinez [2026] EWHC 426 (Ch)

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17

INSOLVENCY UNDERVALUE CLAIMS

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James Smith

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James Smith has a wide-ranging commercial practice which spans banking and financial services, civil fraud, commercial, company, insolvency, international arbitration, pensions, private client, regulatory, and sanctions matters. His international work is principally based in the Gulf.

Examples of James' recent and ongoing instructions include:

- Acting in an eight-day trial before the Dubai International Finance Centre first-instance court, defending the executor of an AED 350m estate against allegations of undue influence, lack of capacity, and want of knowledge and approval (led by **David Russell KC**).
- Acting for the representative members in Jersey proceedings alleging breach of the implied duty of good faith by the principal employer of the HSBC International Staff Retirement Benefits Scheme (together with **Andrew Short KC** and **Naomi Ling**).
- Acting for the Solicitors Regulation Authority to successfully resist an application for restoration to the Roll of Solicitors (as sole counsel; against a silk).
- Acting for a former CEO in a USD \$20m claim under a directors and officers insurance policy in a Dubai-seated DIAC arbitration (led by **David Russell KC** and **Clare Baker**).
- Advising an investment partnership on a EUR €72 million claim against a financial services company for misrepresentation and negligent misstatement (led by **Oliver Powell KC**).
- Drafting an expert report on English law for the Singapore High Court in a GBP £40m claim for fraudulent misrepresentation and breach of a loan agreement (led by **Andrew Spink KC**).

Formerly a law lecturer at the London School of Economics, James graduated with first-class honours in Law (LLB) from the University of Warwick and a distinction in International Commercial Law (LLM) from University College London. He served as a trainee at NATO Headquarters in Brussels, where he wrote speeches for the Secretary-General, Jens Stoltenberg.

He is a contributor to the latest edition of *Lissack and Horlick on International Bribery and Corruption*.

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Banking & Finance

Notable Banking & Finance cases

-
-
- Advising an investment partnership on an intended GBP £63m million claim against a financial services company for misrepresentation and negligent misstatement (led by **Oliver Powell KC**).
-
-
- Preparing an expert report on English law for the Singapore High Court in a GBP £40m claim for fraudulent misrepresentation and breaches of a loan agreement (led by **Andrew Spink KC**).
-
-
- Advising a hedge fund on compliance with the Cayman Islands Beneficial Ownership Transparency Act 2023 (led by **Oliver Powell KC**).
-
-
- Advising borrowers on intended group claims arising out of the alleged miscalculation of interest payable under commercial loan agreements (led by **Helen Pugh**).
-
-
- Advising on the nature and scope of guarantee obligations under an ISDA Master Agreement (led by **Sophie O'Sullivan**).
-

Civil Fraud

Notable Civil Fraud cases

-
-
- Acting for a travel company in an application for a worldwide freezing order and an interim proprietary order against a bookkeeper alleged to have misappropriated assets worth £360,000 (assisting **Henry Reid**).
-
-
- Advising on an application for summary judgment and default judgment against "persons unknown" following a cryptocurrency fraud (assisting **Henry Reid**).
-
-
- Drafting a skeleton argument for a Court of Appeal hearing in *FS Capital & Ors v Adams & Ors* [2025] EWCA 53,

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which arose out of the improper sale of loan assets with a book value of £410m (as a pupil).

Commercial

Notable Commercial cases

- Advising on the merits of resisting the enforcement of an Estonian judgment in England & Wales (led by **Joshua Ray**).
- Acting for a multinational vehicle manufacturer, obtaining summary judgment in the County Court in a claim for breach of contract (instructed by Shoosmiths).
- Defending a multinational insurance and appliance care provider against claims in the County Court for alleged breaches of insurance policies.
- Acting for a Thai royal and businessman in an application to set aside default judgment in the County Court.
- Acting in a two-day fast-track trial of a claim for defective construction works in the County Court.
- Advising a financial advisor on the merits of a professional negligence claim against his former solicitor.
- Advising in conference a FTSE 250 company on the merits of arbitration proceedings against a developer for defective workmanship in a construction project.
- Advising an NHS trust on indemnity provisions in a contract with a medical services provider.
- Advising on the merits of a £780,000 debt claim by a supplier against a UK retailer.

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-
- Advising on methods of enforcing a Swiss judgment in England & Wales under the Lugano Convention (as a pupil).
-

Company & Insolvency

Notable Company & Insolvency cases

- Acting for a former company director in a High Court claim by liquidators for repayment of an overdrawn directors' loan account (instructed by Browne Jacobson).
-
-
- Advising liquidators on the retention of sums under an asset purchase agreement.
-
-
- Advising an insolvency practitioner on their fiduciary and regulatory duties when arranging for the sale of assets from an insolvent estate.
-
-
- Acting for an insolvency practitioner in a claim against a former colleague in the County Court at Central London for breach of a partnership agreement.
-
-
- Drafting particulars of claim for a declaration that a partnership at will has been dissolved, and that an account be taken of partnership dealings.
-
-
- Applications for the rectification of the Register of Companies.
-
-
- Applications for bankruptcy and winding-up orders.
-
-
- Applications to set aside statutory demands.
-
-
- Applications to restrain presentation and/or advertisement of winding-up petitions.

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-
-
- Applications to discharge bankruptcy orders.

-
-
- Applications to annul bankruptcy orders.

-
-
- Applications for final charging orders.

-
-
- Applications for the consolidation of Part 7 and Insolvency Act proceedings.

International Arbitration

Notable International Arbitration cases

- Assisting with an arbitration under LCIA rules arising out of an alleged breach of a Cayman Islands partnership agreement (led by [Olivia Kaye](#)).
-
-
- Advising on the merits of an arbitration under ICC rules arising out of the construction of a wind farm in Romania (led by [Lucian Ilie](#)).
-
-
- Drafting a response to a request for arbitration under the LCIA rules, seeking dismissal due to lack of jurisdiction (led by [Lucian Ilie](#)).
-
-
- Assisting on an arbitration under DIAC rules arising out of an alleged breach of a lease agreement.
-
-
- Enrolled as an arbitrator in the Dubai International Arbitration Centre.

Middle East

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Notable Middle East cases

- Acting in an eight-day trial before the Dubai International Finance Centre first-instance court, defending the executor of an AED 350m estate against allegations of undue influence, lack of capacity, and want of knowledge and approval (led by [David Russell KC](#)).
- Acting for a former CEO in a USD \$20m claim under a directors and officers insurance policy in a Dubai-seated DIAC arbitration (led by [David Russell KC](#) and [Clare Baker](#)).
- Drafting an application for permission to appeal to the DIFC Court of Appeal against a first-instance decision arising out of an alleged breach of a maritime insurance policy.
- Defending a multinational bank against claims in the DIFC first-instance court by a former employee for alleged repudiatory breach of an employment contract (instructed by Clyde & Co (UAE)).
- Acting for a consulting firm in claims in the DIFC first-instance court against former employees for recovery of sign-on bonuses (instructed by Clyde & Co (UAE)).
- Defending a Dubai investment fund against a claim in the DIFC by a former employee for unpaid salary and wrongful termination (instructed by Clyde & Co (UAE)).
- Advising on an application for service out of the jurisdiction in a claim for the recognition and enforcement of an arbitration award in the DIFC (assisting [Patrick Tomison](#)).

Pensions

Notable Pensions cases

- Acting for the representative members in Jersey proceedings alleging breach of the implied duty of good faith by the principal employer of the HSBC International Staff Retirement Benefits Scheme (together with [Andrew Short KC](#) and [Naomi Ling](#)).

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-
-
- Acting for a retired justices' clerk in a claim for the determination of "Crombie" compensation under the Justices of the Peace Act 1949 (Compensation) Regulations 1978.
-
-
- Advising a member of the National Union of Mineworkers on their entitlement to a concessionary fuel allowance (instructed by the National Union of Journalists).
-
-
- Advising the sponsoring employer of a public sector pension scheme on over-payment and under-payment of benefits to members following a miscalculation by the scheme's administrator (assisting **Saul Margo**).
-
-
- Advising on whether pension scheme deeds had been properly attested under the Law of Property (Miscellaneous Provisions) Act 1989 (assisting **Nick Hill**).
-

Trusts, Probate and Estates

Notable Trusts, Probate and Estates cases

-
-
- Drafting a claim against a luxury hotel for breach of bailment and conversion following the misappropriation of jewellery worth £185,000 (instructed by Kingsley Napley).
-
-
- Appearing before a circuit judge in an appeal against a decision of a district judge who had erred in an equitable accounting exercise relating to the ownership of jointly-owned property.
-
-
- Appearing before a circuit judge in an appeal under s 204 of the Housing Act 1996.
-
-
- Acting for the executor of an estate facing a High Court claim, in which the will's witnesses claimed they did not see the testator signing the will.
-
-
- Advising on whether the Protection from Eviction Act 1977 applies to residential occupiers of houseboats.
-

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-
-
- Advising on the merits of applications to remove executors, including where an executor has lost capacity, failed to progress the administration of an estate, and where co-executors have fallen out.
-
-
- Advising in conference on an application to the Court of Protection to remove a deputy.
-
-
- Assisting a supervisor with trial preparation for *Rahman v Hassan* [2024] EWHC 1290 (Ch), the first reported case to consider whether registered land can be the subject of a deathbed gift (as a pupil).
-
-
- Assisting a supervisor with preparation for *Re WCC Henchley Trust* [2024] EWHC 607 (Ch), an application to approve and settle an account in common form (as a pupil).
-
-
- Drafting pleadings in proprietary estoppel claims (as a pupil).
-

Public & Regulatory

Notable Public & Regulatory cases

Solicitors Regulation Authority v Gallagher [2026]

- Acting for the SRA in an application against a solicitor who fabricated a court attendance note.

Kabir v Solicitors Regulation Authority [2026]

- Acting for the SRA to resist an application for restoration to the Roll of Solicitors (against a silk).

Solicitors Regulation Authority v Wood [2026]

- Acting for the SRA in an application against a family law solicitor who hired a private investigator to find out the address of a litigant in person.

Solicitors Regulation Authority v Simpkins [2026]

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- Acting for the SRA in an application against a solicitor who breached client account rules.

Sanctions & Export Controls

Notable Sanctions & Export Controls cases

- Advising HM Treasury's Office of Financial Sanctions Implementation (OFSI) on high-value sanctions enforcement matters.
- Advising an interior design company on the impact of trade sanctions under the Russia (Sanctions) (EU Exit) Regulations 2019 (as sole counsel).
- Advising a Chinese state-owned insurer on sanctions issues arising out of potential liquidation proceedings in the Cayman Islands (led by [Joshua Ray](#)).
- Advising a Russell Group university on the impact of trade sanctions under the Russia (Sanctions) (EU Exit) Regulations 2019 on the establishment of a joint education initiative with a Chinese university (led by [Sophie O'Sullivan](#)).
- Advising a luxury apartment management company on the impact of financial and trade sanctions under the Russia (Sanctions) (EU Exit) Regulations 2019 on the collection of service charge payments from a designated person (led by [Oliver Powell KC](#)).
- Advising vessel-owners on whether the trust services prohibition in the Russia (Sanctions) (EU Exit) Regulations 2019 permits the receipt of payments from designated persons via an escrow account (led by [Oliver Powell KC](#)).
- Advising a UK-Russian dual national on whether the receipt of a legacy from a Russian estate is permitted under Russia (Sanctions) (EU Exit) Regulations 2019 (led by [Joshua Ray](#)).
- Advising an aerospace company on whether the export of aviation products to Chinese customers is permitted under export control legislation (led by [Oliver Powell KC](#)).

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Appointments & Memberships

- Attorney General's Junior Junior Scheme.
- Commercial Bar Association (COMBAR).
- Chancery Bar Association (ChBA).
- London Bar Association (LBA).
- Financial Services Lawyers Association (FSLA).
- Young Fraud Lawyers Association (YFLA).

Education

- PgDip (Bar Vocational Studies), City, University of London: Distinction.
- LLM (International Commercial Law), University College London: Distinction (top of year in Company Law).
- LLB, University of Warwick: First Class (third in year, President of Warwick Law Society).

Publications

- James Smith, "*Proportionality in UK sanctions law: Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs [2025] UKSC 30*" (2025) 10 Journal of International Banking & Financial Law, 672.
- James Smith, "*Russia sanctions and the prohibition on trust services*" (2025) 31 Trust & Trustees, 1-5.
- James Smith, "*Rethinking the role of settlor intent in the variation of trusts: was the 1958 Act an unfinished revolution?*" (2022) 35(4) Trust Law International 246-264.

Awards

- Goldie Scholarship – Gray's Inn.
- Residential Scholarship – Gray's Inn.
- Academic Excellence Scholarship – City, University of London.
- Bar Vocational Studies Scholarship – City, University of London.

Privacy Policy

Read James' privacy policy [here](#).

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Outer Temple

WHEN ADVISERS CONTRIBUTE TO INSOLVENCY

James Smith
Barrister
Outer Temple Chambers, London
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www.outertemple.com

1



If negligent advice precedes insolvency, for what loss is the adviser responsible?

- How advisers can contribute:
 - Transactions
 - Financing
 - Regulatory compliance
 - Restructuring
- Key challenges:
 - Breach: was the advice negligent?
 - Causation: would competent advice have prevented the loss?
 - Scope of duty: was the loss within the risks that the adviser was engaged to guard against?
 - Recoverable loss: what financial loss did the negligence actually cause?

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2



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

- Cs' case:
 - 43 claimant companies;
 - 22 investment schemes: hotels, care homes, student accommodation;
 - c £68m raised from investors.
- Alleged failure was to advise adequately on whether schemes were collective investment schemes (CISs) under FSMA 2000.

Regulatory advice allegedly inadequate

Schemes proceed, funds raised

Companies face repayment liabilities

Companies insolvent; claim against solicitors

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3

Loss

Actual world:
Investment funds received by companies –
but also obligations to repay

Counterfactual world:
If competent advice given, neither the
investment receipt nor the corresponding
liability arises

- Difficulty for the companies: they had received investment funds in the first place.
- £1 in, £1 out: If the receipt and repayment liability match in value, the liability alone does not establish a net loss.

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4

Causation & scope of duty

- The scope of duty question: was the loss a consequence of the risk the adviser undertook to guard against?

Duty:
What was the solicitors
retained to advise on?

Causation:
Would competent advice
have avoided this loss?

Scope & loss:
Does the loss fall within
the duty, and is it
recoverable?

A regulatory retainer does not automatically make the adviser responsible for every commercial failure or every loss suffered by investors.

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5

When should an adviser bear the insolvency loss?

- Insolvency is context, not proof.
 - A collapse does not itself establish negligence or recoverable damages.
- Model the counterfactual properly.
 - Account for moneys received, liabilities incurred, assets, and alternative claims.
- Define the risk and the loss.
 - Connect the alleged breach to a specific loss within scope of duty.

The question is not "Did the advice contribute to insolvency?" but "What legally recoverable loss did it cause?"

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6



Outer Temple

**WHEN ADVISERS CONTRIBUTE TO
INSOLVENCY**

James Smith
Barrister
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David Osborne
Fraser Dawbarns

"Update on use of AI"

David Osborne

Senior Associate Solicitor
Client Relations Manager

E: davidosborne@fraserdawbarns.com

T: [01553 666610](tel:01553666610)



David Osborne is a solicitor and Senior Associate in the Commercial Dispute Resolution team, based in the King's Lynn office. He is also the firm's Client Relations Manager. David has a particular focus on professional negligence and is a member of the PNLA (Professional Negligence Lawyers Association).

David also advises extensively on matters involving insurance, inquests, and solicitors' regulatory and compliance issues.

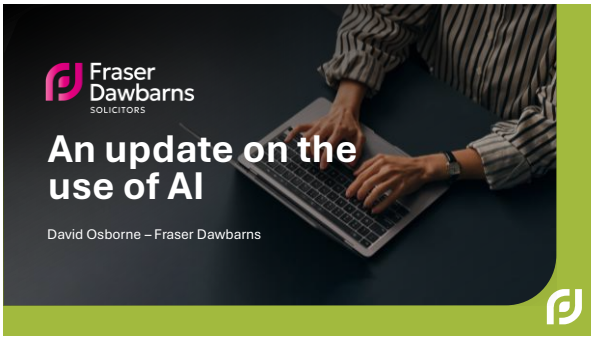
David's typical clients are those who need guidance and advice on professional negligence issues, representing both businesses and individuals as claimants and professionals such as solicitors, accountants, architects, and developers as defendants. David particularly enjoys the problem-solving aspect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

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

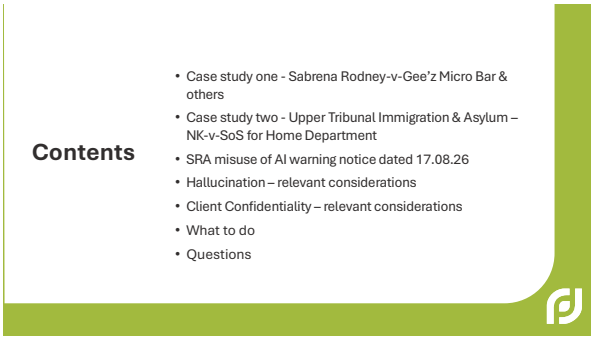
Before joining Fraser Dawbarns in 2003, David worked in the city and at local law firms. His early legal career was spent in London firms where he was focused on maritime and shipping law which often involved complex cross jurisdictional issues. During this time, David was involved in the Zebrugge Ferry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

From 1993 to 2003, David worked at another Norfolk law firm conducting litigation on behalf of personal injury claimants.

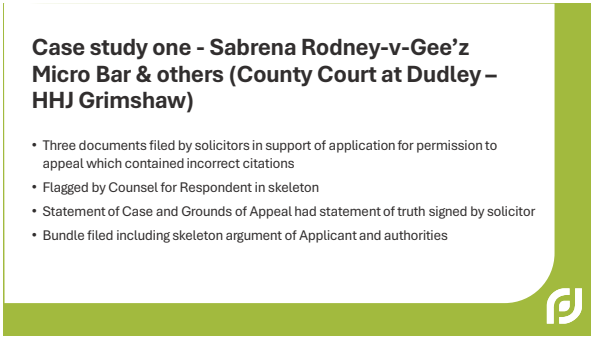
<https://www.fraserdawbarns.com/people/david-osborne/>



1



2



3

Case study one - Sabrena Rodney-v-Gee'z Micro Bar & others

Skeleton argument contained:

- Incorrect citations
- Cited a case which was not relevant to the issues
- Cited a case and the neutral citation given was not for that case but another case



4

Case study one

- Court raised issue of incorrect citations being placed before the Court and *Ayinde*
- Supervisor and solicitor filed statements.
- Supervisor said did not draft, supervise or review the documents submitted to Court
- Solicitor said assisted by paralegal who used an AI tool within case management system
- Solicitor asked not to be referred to SRA



5

Case study one - Sabrena Rodney-v-Gee'z Micro Bar & others

- Judge referred extensively to *Ayinde* and:
- Accepted that there was a cogent explanation for what had occurred and that there had been an unreserved apology
- Nevertheless, referred both solicitor and supervisor to SRA



6

Case study two - Upper Tribunal Immigration & Asylum – NK-v-SoS for Home Department – Judgment 31.07.26

- Appellant solicitors drafted Grounds of Appeal “*completely infected by the use of AI*”.
- False cases cited, paragraphs from judgments quoted which were not actually in the judgment, quotes from the decision below which in fact did not appear in the decision at all
- Concern was expressed, but the solicitors did not initially amend the Grounds of Appeal. Appears from the judgment that they did eventually do so.
- No reference to SRA, but directions were given for Respondent application for wasted costs order.



7

SRA misuse of AI warning notice dated 17.08.26

Two areas of concern:

- False or incorrect citations in filed documents
- Client confidentiality



8

Hallucination – relevant considerations

- Code for Solicitors 3.2 and 3.5 – service provided is competent and there is adequate supervision
- Code for Firms 2.1 – effective systems and controls to manage risk
- Code for Solicitors 2.4 – should only put forward representations to the Court that are properly arguable



9

Hallucination – relevant considerations:

- The duty to the Court means that you should be assured that all submissions and authorities cited are genuine, relevant, and citations verifiable, and advance the argument being made
- If you do put forward false citation could be contempt of Court which if found would be breach of 2.5 of the Code for Solicitors. Further if Court expends time in resolving that could be breach of 2.6 of the Code for Solicitors
- Same applies to the Code for Firms by reason of 4.3 and 4.4 of the Code – effective system of supervision



10

Client confidentiality – relevant considerations:

- Putting client material into open source AI model is to place it in the public domain
- Likely to be a breach of client confidentiality
- The information is likely to be stored in and used by the model in a way that is outside your control. This is breach of DPA 2018 and UK GDPR.
- Client information should only be entered into AI model where there is/are appropriate safeguards in place – whether technical and/or contractual



11

What to do

- Have a Policy on the responsible use of AI (if not got one)
- Never put client information into an open source AI model
- Even if using a “closed” model (e.g. Co-Counsel) – ideally anonymise the client information
- If using AI for research etc. the product must be checked thoroughly and reviewed and **all** citations must be checked
- Any such research should be reviewed by a supervisor and “signed off”

It is clear that the Courts, and SRA, consider that a supervisor is equally, and perhaps more, responsible or culpable if use of AI goes wrong.



12



13



14



Sue O'Brien & Sara Benbow
The Property Mediators

*“What we’ve learnt about mediation
- an interactive session”*



Sue O'Brien

Solicitor

sue@thepropertymediators.co.uk

07887 700710



Sue spent her early career in the City and in Paris (with Holman, Fenwick and Willan, and Slaughter and May) and subsequently became Head of Dispute Resolution at a major regional firm.

Her practice as a solicitor focused on property, professional liability, commercial and probate disputes.

Sue was accredited as a mediator by ADR in 2008 and has been mediating full time since 2016. Sue is a Fellow of the Civil Mediation Council and a member of the PLA and PNLA.

Formerly a leading disputes solicitor, Sue trained as a mediator with the ADR Group and was accredited in 2008. She is a Fellow of the Civil Mediation Council. She is also a member of the Property Litigation Association / RICS Boundary Disputes Panel.



Sara Benbow

Barrister

sara@thepropertymediators.co.uk

07774 957686



Sara was a practising barrister for nearly 30 years and is a senior member of Gatehouse's Property Team. As well as her property mediation and advocacy work, Sara is regularly called upon to write articles, to provide seminars and webinars, and to speak at conferences on various areas of property law. She is also a contributing author to Cousins: Law of Mortgages.

At the heart of Sara's practice has been property litigation, and she brings that knowledge and experience into her work as a specialist property mediator. She has considerable expertise in disputes over real property such as boundaries, easements and adverse possession, co-ownership, mortgages, trusts of land and the impact of insolvency on property rights, as well as conveyancing disputes including issues as to specific performance, rescission or registration, rectification and, especially in the property-development context, cases about planning, covenants, regulated user, options or overage provisions.

Sara is also an experienced and knowledgeable commercial and residential landlord and tenant lawyer, covering both contentious and non-contentious work and understanding the perspectives of landlords, tenants and others such as beneficiaries, guarantors or insolvency practitioners who hold interests related to commercial or residential leasehold land.

Sara was trained and accredited by the ADR Group in 2003.



WHAT WE HAVE LEARNT ABOUT MEDIATION

A session for the PNLA Autumn Conference 15 October 2026

By Sara Benbow and Sue O'Brien of The Property Mediators

1

UNIVERSAL THEMES

- Apply to any type of mediation across the entire spectrum
- Understanding them is key to success, whether as a mediator or as a party/representative seeking settlement
- Plan your strategy to maximise their effective use



2

1. It's all about the **PEOPLE**

- Perceptions and feelings drive negotiating stances
- Understand and work with mindset and motivations of everyone involved
- Interplay of different characters can be key
- Has "the fight" become the most important thing?
- What is the best solution for the parties?



3

ALPHA V OMEGA

Alpha Books Limited and Omega Supply Co. Ltd have neighbouring commercial premises, built during the 19th Century. Each owns a portion of a courtyard area at the rear which has historically been used by all surrounding businesses for deliveries etc. Both properties were previously owned and occupied by a single family furniture business, run by the great grandfather of the MD of Alpha. The companies are in dispute about continuing access to the yard. Each asserts forcefully that the other cannot reach their premises in modern vehicles without trespassing on and causing damage to land belonging to the other. Negotiations have always broken down in acrimony.



4

What are the real drivers?



5

2. **EMPOWERMENT**

Agree or Disagree?

"The mediator should persuade the parties to accept the best possible settlement"



6

What is the role of the mediator?

- Listen
- Refocus – forward on solution not backward on problems
- Facilitate communication & creativity
- Reality test
- NOT to decide, impose, advise or fix



7

3. *Expect the Unexpected.....*

- Prepare thoroughly; don't pre-judge
- Plan how to navigate potentially choppy waters
- Normalise the experience
- Change the energy
- Be honest with your mediator !



8

What have we learnt?

- It's all about the people
- Empower the parties to find their solution
- Expect the unexpected
- Positive outcomes can germinate in the darkest moments



9





Jayna Patel
Cardium Law

“Chair’s Closing Remarks, Questions and Discussion”



Katy Manley
PNLA President
BPE Solicitors

“PNLA News Update & Future Events”



Katy Manley LLB

PNLA President
Consultant – BPE Solicitors

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

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

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

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

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



With thanks to all our speakers

*Please complete your feedback form
please go to:*

<https://www.pnla.org.uk/event/london-conference-jayna-patel-outer-temple-chambers-the-ultimate-roundup-iv-15-october-2026/>

Please join us for drinks between 5:30–7:00pm

“Old Cock Tavern Fleet Street”

Sponsored by -

*Outer Temple Chambers & 3 Hare Court
- invitation to PNLA Network – all welcome*