



**PROFESSIONAL NEGLIGENCE AND
LIABILITY UPDATE**

ENGLAND & WALES

MANCHESTER CONFERENCE

Thursday, 20th March 2025

PROFESSIONAL NEGLIGENCE LAWYERS ASSOCIATION

MANCHESTER CONFERENCE

Thursday, 20th March 2025

0900–0930 Registration and Refreshments

0930–0935 *“PNLA Introduction”*

Katy Manley – PNLA President / Consultant - BPE Solicitors LLP

0935–1015 *Keynote: “The Judges Perspective”*

His Honour Judge Richard Pearce & His Honour Judge David Hodge KC

1015–1045 *“Chair’s Address”*

Gregory Treverton-Jones KC – 39 Essex Chambers

1045–1115 *“CJC Consultation on Litigation Funding & Costs”*

Jamie Molloy – Ignite Specialty Risk – CJC Working Party Member

1115–1135 Refreshments

1125–1205 *“The Claimant Perspective”*

David Wingate – We Solicitors

1205–1220 *“Disclosure Update”*

Dominic Tucker – iDiscovery Solutions

1220-1300 *“Scope of duty since Manchester Building Society: clarity or uncertainty?”*

Jonathan King – Deans Court Chambers

1300–1400 Lunch

1400-1440 *“The Surveyors Perspective”*

Rory Dillon MBA MRICS FNARA – Managing Director – Fletcher Bond

1440–1520 *“Running collective claims in professional negligence actions”*

Pépin Aslett – St John’s Buildings Chambers

1520–1600 *“A Defendants’ perspective”*

Hannah Williams – Partner – Kennedys

1600–1615 Refreshments

1615–1645 *“The extended Fixed Recoverable Costs regime”*

Victoria Morrison-Hughes – Managing Director; Costs Lawyer BA(Hons) – Integral Costs

1645-1700 *Questions and discussion – Chairman’s closing remarks*

1700-1900 *“Drinks sponsored by Deans Court and St John’s Buildings”*

7 hours CPD

**PROFESSIONAL NEGLIGENCE AND LIABILITY
MANCHESTER CONFERENCE
Thursday, 20th March 2025
ATTENDEES (1 of 2)**

His Honour Judge David Hodge KC		Manchester
His Honour Judge Richard Pearce		Manchester
Neil Armitage	Ward Hadaway LLP	Newcastle upon Tyne
Pépin Aslett	St John's Buildings	Manchester
Andrew Call	4 New Square	London
Andrea Cohen	PNLA & Weightmans	Cheshire
Chris Cooney	Campbell Courtney & Cooney	Surrey
Rory Dillon	Fletcher Bond	Manchester
Isabella Glass	Blackstone Solicitors Ltd	Hale
Robert Godfrey	Bond Turner	Liverpool
Georgina Groves	HCR Legal LLP	Worcester
Gemma Horner	Levi Solicitors	Leeds
Peter Hornsey	Ward Hadaway LLP	Newcastle upon Tyne
Sukhbir Kaur	Temple Legal Protection Ltd	Surrey
Peter Kaye	Kuits Steinart Levy LLP	Manchester
Alistair Kennedy	Tyr Law	Leeds
Jonathan King	Dean's Court Chambers	Manchester
Sam King	Forbes Solicitors	Preston
Julia Kwiatkowska	Blackstone Solicitors Ltd	Hale
Andy Lyalle	Temple Legal Protection Ltd	Surrey
Tracy Lyons	We Solicitors LLP	Manchester
Katy Manley	PNLA President & BPE Solicitors	Cheltenham
Stephen McArdle	Forbes Solicitors	Preston
Jamie Molloy	Ignite Specialty Risk	London
Victoria Morrison-Hughes	Integral Costs	Cheshire

Lucy Nelson	Hill Dickinson LLP	Manchester
David Osborne	Fraser Dawbarns LLP	Norfolk
Paul Rogerson	Law Society Gazette	Manchester
Neil Rose	Legal Futures	Hertfordshire
Sylwena Sempa	Shoosmiths LLP	Manchester
Yanique Slotemaker	ARAG Law	Bristol
Johanna Smallman	Bexley Beaumont Limited	Manchester
Chris Tetzlaff	Escalate Disputes	Liverpool
Gregory Treverton-Jones KC	Chair - 39 Essex Street Chambers	London
Dominic Tucker	IDiscovery Solutions	London
Ezmay Walker	We Solicitors LLP	Manchester
Tom Whitfield	Hay & Kilner	Tyne & Wear
Giselle Williams	AST Hampsons Solicitors	Lancashire
Hannah Williams	Kennedys	Manchester
David Wingate	We Solicitors	Manchester
Melissa Worth	Bexley Beaumont Limited	Manchester



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Integral
legal costs


DEANS COURT
CHAMBERS

 **St John's
Buildings**


iDiscovery Solutions



Katy Manley
PNLA President
Consultant - BPE Solicitors LLP

“PNLA Introduction”



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



**His Honour Judge Richard Pearce
&
His Honour Judge David Hodge KC**

Keynote: “The Judges Perspective”



His Honour Judge Richard Pearce

His Honour Judge Richard Pearce was called to the Bar in 1985. He practised in the sphere of common law. He was appointed a Recorder in 2005 and a full-time civil Circuit Judge in 2015, sitting initially in Chester and Liverpool and more recently in Manchester.

Richard is the Judge in charge of the Circuit Commercial Court in Manchester and also sits in the Technology and Construction Court and the Chancery Division, as well as in the County Court, the King's Bench Division, the Administrative Court and the Upper Tribunal Immigration and Asylum Chamber.

He is a frequent speaker at events organised by the British Irish Commercial Bar Association. He has been involved in the Court Reform programme, including work on online court processes.



His Honour Judge David Hodge KC

His principal court is the Manchester Civil Justice Centre although HHJ Hodge KC also sits in Liverpool and at the Rolls Building in London. He is authorised to hear cases in the Chancery Lists, the Circuit Commercial Court, and the Technology and Construction Court. He is also authorised to sit in the Upper Tribunal (Lands Chamber) and the Court of Protection.

HHJ Hodge KC was educated at a local state secondary school (St Margaret's) in Liverpool, where he grew up. He studied at University College, Oxford where he took a first class degree in Jurisprudence and was awarded the post-graduate degree of Bachelor of Civil Law.

He was called to the Bar in 1979 and was one of only four in his year to receive a first class in the Bar Finals. He practised at the Chancery and Commercial Bars from chambers in Lincoln's Inn, London (9 Old Square and then Maitland Chambers) between 1980 and his appointment to the Bench in 2005, specialising in the fields of property and professional liability.

He was appointed a QC (now KC) in 1997 and sat in crime as a fee-paid Assistant Recorder and Recorder (from 1998) and also as a Deputy High Court Judge of the Chancery Division (from 2004) until his appointment as a full-time, salaried judge in 2005. HHJ Hodge KC was elected a Bencher of Lincoln's Inn in 2000 and he served as Joint Chair of its Students Activities Committee from 2008 to 2014. He has been a lead advocacy tutor and tutor trainer for Lincoln's Inn since 1996.



He has served as a member of the Incorporated Council of Law Reporting since 2010 and of the Legal Advisory Commission of the General Synod since 2016. HHJ Hodge KC has acted as a Judicial College course tutor on the specialist jurisdictions course since 2010 and he served as its joint course director between 2019 and 2021.

HHJ Hodge KC is the Chancellor of the Dioceses of Blackburn and Oxford and in 2022 he served as the Deputy Chancellor of the Diocese of Ely to determine the unsuccessful petition to remove a contested memorial from the Grade I listed chapel of Jesus College, Cambridge. He has served on the Committee of the Council of HM Circuit Judges since 2007 and has acted as the Secretary and then the Chair of its Civil Sub-Committee. He is currently the Senior Vice-President of the Council.

In 2010 he published 'Hodge on Rectification' which is now in its 2nd edition (2015).



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Gregory Treverton-Jones KC
39 Essex Chambers

“Chair’s Address”



Gregory Treverton-Jones KC

Year of call: 1977 | Silk: 2002

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Phone: +44 (0)20 7832 1111

“A giant in the field.” Chambers and Partners

Greg Treverton-Jones KC specialises in regulatory and disciplinary issues concerning legal professionals. He is one of the best known barristers in the field has appeared in many of the leading cases, both for the regulators and respondents. Most of his work nowadays is on behalf of those facing regulatory investigations or disciplinary proceedings. He is instructed by numerous firms, individual solicitors and sole practitioners in connection with the most pressing regulatory issues of the day, He has been described in Chambers and Partners as the leading defence advocate in solicitors’ disciplinary cases.

He is regularly instructed by the Crown Prosecution Service (CPS) to advise and appear in costs applications made by acquitted privately-paying defendants in the Crown Court.

He is co-author of successive editions of *The Solicitor’s Handbook* (2008-2022), co-author of *Disciplinary and Regulatory Proceedings* (9th edition, 2017, 10th edition, 2019) and has previously been an editor of *Cordery on Legal Services*. He has an extensive advisory practice, concerning all aspects of legal regulation. He regularly writes articles and is quoted in the legal press.

Greg was named ‘Silk of the Year’ for Professional Discipline at the 2015 Chambers Bar Awards.

Greg is recommended in Chambers and Partners 2020 for Professional Discipline (band 1) and The Legal 500 2020 for Professional Discipline and Regulatory Law (tier 1).

Areas of expertise

Regulatory and Disciplinary

Costs and Litigation Funding

Regulatory and Disciplinary

Cases of note:

- *Solicitors Regulation Authority v James, MacGregor and Naylor* [2018] EWHC 3058 (Admin) - Approach of the Solicitors Disciplinary Tribunal to sanctioning for dishonesty.
- *Wingate and Evans v Solicitors Regulation Authority* [2018] EWCA Civ 366 - Meaning of lack of integrity in disciplinary proceedings.
- *Yussouf v Solicitors Regulation Authority* [2018] EWHC 211 (Admin) - Entitlement to an oral hearing in some circumstances in regulatory proceedings.
- *Smith v Bar Standards Board* [2016] EWHC 3015 (Admin) - Inappropriateness of reliance on hearsay evidence in Bar Disciplinary Tribunal.
- *Solicitors Regulation Authority v Solicitors' Disciplinary Tribunal and Arslan (Law Society intervening)* [2016] EWHC 2862 (Admin) - Standard of proof in certain regulatory proceedings.

Costs and Litigation Funding

Gregory Treverton-Jones QC regularly assists solicitors in connection with regulatory and costs issues arising out of the Jackson reforms and the introduction of alternative business structures, including advising on and assisting in the drafting of new-style damages-based agreements and Conditional Fee Agreements. He has been instructed in several group litigation matters, advising solicitors and claimants as to their funding arrangements.

He is regularly instructed on behalf of the Crown Prosecution Service to oppose applications for costs against the CPS following Crown Court trials, and has appeared in the following recent Divisional Court cases:

Recommendations

"A renowned advocate who specialises in the representation of solicitors facing significant disciplinary proceedings. He is also noted for his adept representation of barristers and surveyors, as well as their regulators."

Chambers and Partners 2022

"Considered to be the expert for solicitors discipline and regulation. An excellent advocate." The Legal 500 2022

Memberships

- LCLBA
- ARDL
- ALBA
- Welsh Circuit

Qualifications

Education:

- 1973-1976, New College Oxford, MA jurisprudence

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Jamie Molloy
Ignite Specialty Risk
CJC Working Party Member

“CJC Consultation on Litigation Funding & Costs”



Jamie Molloy

Head of ATE and Co-founder

jamie.molloy@ignitespecialty.com

0798 4388 544

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

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

Most recently, Jamie supported the leading authority on the use of single claim forms for group actions (*Morris Ors v. Williams Co (Solicitors)* [2024] EWCA Civ 376) and also one of the claimants in the leading BII Test Litigation (*Why Not Bar and Lounge Limited v West Bay Insurance plc & QIC Europe Limited* [2024] EWCA Civ 10).

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

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CJC Consultation on Litigation Funding & Costs

Jamie Molloy, Ignite Specialty Risk
March 2025



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Litigation Funding

- Traditionally used in higher value commercial disputes and involves an independent third party financing the legal action in return for a share of the damages proceeds (if any)
- More recent years, significant increase in use of litigation funding in consumer claims, albeit on varied models including more traditional model of lending such as the funders return paid irrespective of the litigation outcome
- Global Litigation funding market estimated to be worth between £33 billion and £67 billion in 2024

3 19 March 2025

PACCAR

July 2023 - R (on the application of PACCAR Inc and others) (Appellants) v Competition Appeal Tribunal and others (Respondents)

- Litigation funding agreements which entitle funders to payment based on a percentage of damages are Damages-Based Agreements (DBA's)
- Such LFAs are unenforceable unless they comply with the relevant regulatory regime for DBAs (*Damages Based Agreement Regulations 2013/Section 58AA Courts and Legal Services Act 1990*)
- Most funding models charge the greater of 1) a percentage of damages or 2) a multiplier of the capital invested, meaning most LFA's caught by PACCAR

Litigation Funding Agreements (Enforceability) Bill

- March 2024 Government introduced *Litigation Funding Agreements (Enforceability) Bill*
- Intended to restore the position that existed before the Supreme Court ruling that LFA's are not DBA's and therefore enforceable
- Same time Lord Chancellor Alex Chalk commissioned the Civil Justice Council (CJC) to lead the review on the third-party litigation funding market in England and Wales
- Parliament dissolved 30th May 2024 with the bill being caught in the wash up – No Bill



Ongoing Reports

- Professor Mulheron KC Report for the Legal Services Board (LSB)
- The European Law Institute (ELI)
- Civil Justice Council Report (CJC)

Mulheron Report - May 2024

Led by Professor Rachael Mulheron KC (Hon, Professor of Tort Law and Civil Justice at Queen Mary University of London)

- Litigation funding provides a mean of access to justice for individuals, SMEs and corporations would be unable or unwilling to self-fund
- Funders business model results in them selecting minority of cases – estimated to be 3-5%
- Accordingly, litigation funding cannot be 'scaled up' to offer a mainstream route to access to justice
- Whilst litigation funding enables cases to be run which otherwise wouldn't, following deductions the damages balance often does not address the detriment a claimant has suffered
- Litigation funding is often used in cases impacting wider consumer interests with the results impacting consumer markets as well as the development and enforcement of the rule of law

European Law Institute Report - October 2024

Led by Dame Sara Cockerill, High Court judge and former Head of the Commercial Court

- Comments that regulation should only be considered the event of an identifiable problem or market failure
- Acknowledges that a 'one-size-fits-all' approach, which is what prescriptive regulation effectively yields, ignores the different contexts in which funding can assist in access to justice
- Proposes 12 key principles, framed in mandatory terms, including transparency, capital adequacy, funders' fees and control over proceedings
- Considers such an approach levels the playing field between funders and funded parties without imposing overly restrictive obligations on either party

Civil Justice Council (CJC) - Interim report - October 2024

Led by Mr Justice Simon Picken, Dr John Sorabji, Mrs Justice Sara Cockerill, Prof. Chris Hodges, Lucy Castledine (FCA) and Nick Bacon KC

Wider Consultation Group – Law firms, Funders, Legal Expenses Insurers (including Ignite)

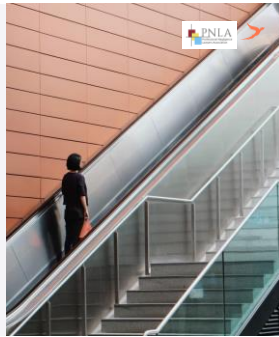


CJC submissions – Closed early March 2025

- Legal Services Board support regulation
- The Law Society, Bar Council, CILEX and the Association of Costs Lawyer call for stronger oversight of litigation funding
- Association of Litigation Funders (ALF) and the International Legal Finance Association (ILFA) argue there was no evidence of harm that needs to be addressed
- Stewarts, the Collective Redress Lawyers Association (CORLA), academics from the University of Oxford pressing for urgent action in their submissions to the CJC, which primarily sought a fix to PACCAR

Views

- Necessary to distinguish types of funding – Commercial, Consumer, etc
- Limited reported instances of harm in commercial litigation funding
- Significant reported instances of harm arising from consumer litigation funding
- (Pure Legal, SSB, Novitas)
- Estimated losses north of £400m



Views

Some form of regulation likely owing to:

- Problems with consumer litigation funding
- Growth in use of 'Opt Out' Regime in the Competition Appeal Tribunal for Consumer Class Actions
- All other litigation stakeholders are regulated



Views

- More emphasis should be placed on alternative methods of funding – CFAs, DBAs, ATE
- Recoverable CFAs/ATE?
- Reduces pressure on litigation funders
- Heavily regulated through Costs Budgeting, Costs Assessment and regulation of providers (SRA, FCA, Etc)



PACCAR 2?

- Before July 2025, Court of Appeal due to rule new argument that LFA's are DBA's
- Based on current model used where funders charge a multiple of the sum invested
- *Alex Neill v Sony Interactive Entertainment*;
- *Apple Inc. & Apple Distribution International Ltd v Kent*;
- *Commercial and Interregional Card Claims II Ltd v Visa* ;
- *Commercial and Interregional Card Claims I Ltd v Mastercard*;
- *Gutmann v Apple Inc & ors*.



Questions?



David Wingate
We Solicitors

“The Claimant Perspective”



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David Wingate

dwingate@wesolicitors.com

David has been a solicitor since 1999 and worked in litigation for the nearly 30 years having weathered the introduction of both the Woolf & Jackson reforms.

Born and raised in Nottingham (and remains a loyal Nottingham Forest fan), David is a graduate from Northumbria University.

From there he spent a couple of years working for the Employment Service before commencing a training contract in Manchester in 1998. David set up his practice, with his co-partner, in 2001 and has specialised in professional negligence claims in the last decade.

He has mainly worked on solicitor negligence claims with much experienced of buyer-funded development related claims against solicitors. More recently, he has been at the forefront of the cases SSB Group Limited concerning the now infamous failed cavity wall clams.

David is instructed by both claimants and defendants and has a great deal of experience of running multi-claimant cases.

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**MANAGING
MULTI-CLAIMANT
CLAIMS**

David Wingate
we solicitors llp

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Introduction

SSB

Fractional developments/UCIS

Architects

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The retainer

Generic costs & ATE

VAT

Costs of extrication

Notifying your PI insurer

Consent to share information

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Are you going to get paid?

Make Third Party (Rights Against Insurers) Act requests?

Will insurers seek to rely upon policy exclusions?

Compensation funds (both SRA and CLS)

Poor service claims

Counsel

Involve them early

Do you need a team?

Generic letter before action

How are they going to get paid
(fixed costs cases or time spent?)

Speak to other claimant firms

Useful flow of information

Co-ordinated action

Common approach to heads of loss and costs



The defendants

- Make early contact
- Can you agree the approach to the cases?
- Forego letters before action?
- Standstill agreements
- Confidentiality of discussions and what you can tell your client

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Settlement

- Agreement on minimum settlement amounts
- Having ATE insurers on standby
- Ensuring claimants are fully up-to-date on costs (generic and own)
- Avoid being held to ransom by a minority of your clients

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we solicitors llp



And finally

- Publicity
- Keep a master spreadsheet of cases
- Generic client updates – remind clients to keep confidential!
- Keep a shared information folder and remind your team to add to it
- Don't forget that your clients will be speaking to each other

David Wingate
we solicitors llp



Thank you for listening and any questions?

David Wingate
we solicitors llp



Dominic Tucker
iDiscovery Solutions

“Disclosure Update”



DOMINIC TUCKER

Associate Director, UK/EEA



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

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

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

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EDUCATION

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

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

– Steve Jobs





CONTACT DETAILS

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Notes: -

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Jonathan King
Deans Court Chambers

***“Scope of duty since Manchester Building Society:
clarity or uncertainty?”***

Jonathan King

2009 Inner Temple, king@deanscourt.co.uk



Education

Dr Challoners' Grammar School, Amersham
MA (Cantab)

Professional Associations

Northern Circuit
Northern Circuit Commercial Bar Association
Professional Negligence Bar Association
Personal Injury Bar Association

Areas of Specialism

Business and Property Law

Property Damage and Insurance Law

Professional Negligence

TOLATA

Civil and Insurance Fraud

Common Law

Personal Injuries

Product Liability

Since joining Deans Court Chambers in 2009, Jonathan has developed a busy practice within the business and property and common law spheres, with particular focus on property damage, property ownership, professional negligence, civil fraud and commercial and insurance related disputes.

Jonathan is regularly instructed to advise on and represent clients in relation to a range of property related matters, including a large number of property damage claims, as well as matters related to the title to and ownership of property and the extent of parties' obligations either as owners, lessees or occupiers of property.

In addition, Jonathan is regularly instructed (on behalf of claimants and defendants) in relation to actual and threatened professional negligence actions, principally involving solicitors and surveyors, but extending to finance professionals (including brokers) and other fields.

A number of cases which Jonathan works on include issues of civil fraud, including allegations of dishonesty in a range of contexts, issues relating to alleged misuse of company funds, and breaches of freezing orders.

In addition, Jonathan undertakes work, as appropriate, within other common law fields touching upon similar issues, including (for example) personal injury claims which involve questions regarding the extent of duties owed by landlords (e.g. under the Defective Premises Act) or which otherwise involved consideration of property law, and claims involving allegations of civil fraud, as well as within high value personal injury claims or those with particular issues of complexity.

Prior to joining Deans Court Chambers, Jonathan worked as a Vice-President in the legal department of US investment bank Goldman Sachs where he was responsible for advising on and implementing the requirements of domestic and international anti-corruption and

anti-money laundering legislation.

Notable cases:

Commercial / Civil fraud: *Park v CNH Industrial Capital Europe Ltd* [2021] EWCA Civ 1766

Sole counsel for the successful appellant before the Court of Appeal for the hearing of Mr. Park's appeal concerning whether or not Mr. Park's action to set aside a judgment on grounds that it was procured by fraud was abusive and liable to be struck out.

The Court of Appeal held that the evidence demonstrated, in the clearest terms, that the court was deceived at the time when the judgment in default was entered (in the original proceedings), and that the case that CNH deceived the court into granting judgment by default by making deliberately false statements in their Particulars of Claim is overwhelming. Having regard to the principles set down by the Supreme Court in *Takhar v Gracefield Developments Limited* [2019] UKSC 13, and to the later High Court decision in *Elu v Floorweald Ltd* [2020] EWHC 1222, Mr. Park's claim was not an abuse of process, and ought not to have been struck out.

Commercial: *Price & Ors v Flitcraft Ltd & Ors* [2022] EWHC 3381 (Pat)

Junior counsel (led by Stephen Grime KC) for the trial of the claimants' claims for relief, including damages for patent infringement, involving issues as to *inter alia* the transmission of the ownership of patents following a series of assignments and insolvency events, and the standing of the licensee to bring proceedings for infringement.

Property ownership and civil fraud: *Varia v Varia*, High Court (Business and Property Courts, HHJ Pelling QC)

Represented the successful claimants at a 5 day, 3 party trial of a property dispute before HHJ Pelling QC sitting as a judge of the High Court. The Claimants sought possession of a property which they had purchased in the 1980s, but in which the Claimants' nephew, and his former wife, had lived for almost three decades. The Defendant, by defence pleaded by leading counsel, alleged that the relevant trust deed was a sham, and counterclaimed for *inter alia* an order pursuant to s.423 Insolvency Act 1986 ("IA 86") and a declaration that the Claimants were estopped from asserting ownership, and brought the Claimants' nephew into proceedings as a third party.

Following a trial on all issues involving overseas video link evidence and consideration of expert handwriting evidence, judgment was handed down in favour of the claimants, who obtained relief as claimed together with an order for costs.

Professional negligence: Successful representation, at heavily contested trial (2022), of former client of a well-known solicitor's firm for mishandling of the client's underlying claim.

Property damage: Representation of claimants in successful claim for damages following what was found to be the unlawful burying of asbestos waste on land belonging to one claimant, under a contract said to have been entered by the other claimant.

Professional negligence: Representation of a number of claimants (including a number domiciled overseas) in respect of claims against former solicitors relating to the acquisition of 'off-plan' residential property, including in respect of the resolution (by ADR) of a number of claims, with others ongoing.

Commercial / Property damage: Representation of claimant at interlocutory stages in respect of claim for damages for misrepresentation by vendor, on account of a failure to disclose the existence of alterations made without listed building consent. Matter resolved prior to trial.

Commercial and civil fraud: Representation of three defendants in defence of claim for damages for alleged conversion of missing boilers. Acted as sole counsel for three defendants both at interlocutory stages (including in successfully resisting an application to restrain solicitors and counsel from acting further) and for trial, listed for 7 days but adjourned on first day owing to illness of one party. Matter resolved prior to relisted trial.

Property damage / nuisance: Sole counsel for defendant at trial and thereafter in respect of property damage claim which engaged issues as to the scope and nature of liability in nuisance relating to the obstruction of the public highway. Matter resolved on favourable terms prior to handing down of judgment.

Personal injury: Acted for claimant in respect of claim for serious injury sustained following an accident at work which in which significant issues arose as to causation, including an alleged failure to obtain treatment which was said to break the chain of causation. Matter settled for a 7-figure sum (inclusive of costs) prior to trial.

Property ownership: Successful representation of applicant before 4 day Land Registry adjudication over acquisition of title to strip of land by adverse possession, including issues as to the transmission (or otherwise) of ownership thereafter.

Commercial: Successful representation of Claimant in action for conversion of monies passing through bank account of high street finance firm.

Notable Cases

Park v CNH Industrial Capital Europe Ltd

Practice Area:

Jonathan King recently appeared before the Court of Appeal for the hearing of an appeal concerning whether or not an action to set aside a judgment on grounds that it was procured by fraud was abusive and liable to be struck out.

Following a judgment entered in 2016 upon the striking out of Mr. Park's defence in the original proceedings brought by CNH, Mr. Park issued proceedings in 2018 for the rescission of the judgment on grounds that the judgment had been procured by fraud on the part of CNH. CNH applied to strike out the rescission proceedings on grounds that *inter alia* the relevant facts were said to have been known to Mr. Park at the time of the original judgment, and that the acts alleged by Mr. Park to be fraudulent were not the operative cause of the entry of the original judgment.

At first instance, CNH's application for strike out was refused, however the rescission proceedings were subsequently struck out on CNH's appeal.

Within a unanimous judgment handed down on 24th November 2021 (Park v CNH [2021] EWCA Civ 1766), the Court of Appeal held that the evidence demonstrates, in the clearest terms, that the court was deceived at the time when the judgment in default was entered (in the original proceedings), and that the case that CNH deceived the court into granting judgment by default by making deliberately false statements in their Particulars of Claim is overwhelming. Having regard to the principles set down by the Supreme Court in *Takhar v Gracefield Developments Limited* [2019] UKSC 13, and to the later High Court decision in *Elu v Floorweald Ltd* [2020] EWHC 1222, Mr. Park's claim was not an abuse of process, and ought not to have been struck out.

Jonathan King acted for the successful appellant, Mr. Park, instructed on a direct access basis.

A copy of the judgment can be found at <https://www.bailii.org/ew/cases/EWCA/Civ/2021/1766.html>

Varia v Varia, High Court (Business and Property Courts)

Practice Area: Chancery

Represented the successful claimants at a 5 day, 3 party trial of a property dispute before HHJ Pelling QC sitting as a judge of the High Court. The Claimants sought possession of a property which they had purchased in the 1980s, but in which the Claimants' nephew, and his former wife, had lived for almost three decades. The Defendant, by defence pleaded by leading counsel, alleged that the relevant trust deed was a sham, and counterclaimed for *inter alia* an order pursuant to s.423 Insolvency Act 1986 ("IA 86") and a declaration that the Claimants were estopped from asserting ownership, and brought the Claimants' nephew into proceedings as a third party. Jonathan King had advised on the Claimants' claim, throughout, and had drafted the statements of case. Following a trial on all issues in December 2018 involving overseas video link evidence and consideration of expert handwriting evidence, judgment was handed down in favour of the Claimants, who obtained relief as claimed together with an order for costs.

Practice Area:

Successful representation of applicant before 4 day Land Registry adjudication over acquisition of title to strip of land by adverse possession

Practice Area:

Successful representation of community interest group at 4 day public inquiry into the existence or otherwise of rights of way across a school playing field.

Practice Area:

Successful defence of Multi Track personal injury proceedings centred on the ability, or otherwise, of the Defendant to raise an economic defence, and the interpretation of the PPE Regulations post *Threlfall v Hull City Council*. Claimant refused permission to appeal to Court of Appeal.

Practice Area:

Successful representation of Claimant in action for conversion of monies passing through bank account of high street finance firm.

Practice Area:

Represented Claimant in ToLATA proceedings for transfer of proceeds of sale of property. Matter settled shortly prior to 3 day trial, achieving settlement of full value of interest.

Deans Court Chambers: 24 St. John Street, Manchester, Greater Manchester M3 4DF
Telephone: 0161 214 6000 Email: clerks@deanscourt.co.uk

Scope of duty after *Manchester Building Society*

Clarity or confusion? The search for purpose.



PNLA Northern Seminar
Jonathan King,
Deans Court Chambers

Scope of duty before *MBS*

- SAAMCo: the role of 'caps' and counterfactuals
 - Counterfactuals : What would the claimant's loss have been if the information or advice provided by the defendant had been correct?
 - 'Caps' : Limiting the recoverability of damages to those which fall within the scope of the duty of care assumed by the defendant.

*Manchester Building Society v
Grant Thornton [2022] AC 783*

MBS v Grant Thornton

Context

- GT provide advice on use of 'hedge accounting' and negligently stated that hedge accounting *could* be used to mitigate the volatility of interest rate swaps
- MBS enter into long term swaps in reliance upon this
- Seven years later, MBS find out that the advice was incorrect, and need to restate their accounts
- Restated accounts indicate a regulatory capital deficit
- To cover this, MBS is required to 'close out' swap positions, at a substantial cost

MBS v Grant Thornton

The losses

- GT's advice provided in 2006
- 'Realisation' and the need to restate accounts occurs in 2013
- In the intervening period, the 2008 financial crisis causes the market value of swaps to decline, to the point where they become a balance sheet liability
- MBS pays c. £33m to close out the swaps, and incurs transaction fees of c £300k in doing so
- Swaps are closed out at what is *then* 'fair value'

MBS v Grant Thornton

Recoverable loss?

- GT provided negligent advice. Such advice caused MBS to purchase swaps, and later caused the need for MBS to 'sell down', and therefore caused the loss, establishing clear 'but for' causation.
- VS -
- GT don't advise MBS to purchase swaps. MBS get 'market value' for swaps. MBS's loss is a loss in value sustained because of movement in the markets in the intervening 7 years.

MBS v Grant Thornton

The six stage test

- Confirming that "Information" and "advice" dichotomy is unhelpful, as previously highlighted in *Hughes Holland v BPE*
- Noting the difficulty of counterfactuals, and the scope for "abstruse and high debatable arguments" as to the counterfactuals to be used.

MBS v Grant Thornton

The broader framework: The six stage test

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

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

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

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

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

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

MBS v Grant Thornton

The broader framework: The six stage test

Note that:

- Each of 'but for' factual causation and scope of duty is one of a series of the six-stage test which permits a wide ranging enquiry.
- Focus of scope of duty is not 'advice vs information', but rather the *purpose* for which the professional was engaged

MBS v Grant Thornton

Purpose

Per Lord Hodge DPSC and Lord Sales JSC (giving the leading judgment)

In our view, the scope of the duty of care assumed by a professional adviser is governed by the purpose of the duty, judged on an objective basis by reference to the reason why the advice is being given (and, as is often the position, including in the present case, paid for).

...in the case of negligent advice given by a professional adviser one looks to see what risk the duty was supposed to guard against and then looks to see whether the loss suffered represented the fruition of that risk."

MBS v Grant Thornton

Purpose in MBS

Per Lord Leggatt JSC:

- *"The purpose of Grant Thornton's duty of care was solely to ensure that the society had accurate advice about the proper accounting treatment of the mortgages and swap on which it could rely in taking commercial decisions, including the decisions which the society took to enter into long-term interest rate swaps as a hedge against changes in the fair value of its mortgage loans. Grant Thornton's liability for the foreseeable consequences of giving incorrect and negligent advice is correspondingly limited by the scope of duty principle to such consequences as flowed from matters which made that advice incorrect"*
- *Because "...the full cost of closing out the swaps (leaving aside the transaction costs) is attributable to a risk (of the absence of an effective hedging relationship between the swaps and the mortgages) which Grant Thornton owed a duty of care to protect the society against. It therefore fell within the scope of Grant Thornton's duty".*

Life after MBS

Clarity of principle...

...does not guarantee simplicity in application

(1) Oxford Property Investments Ltd (2) Sapphire Developments v Peter Lynn and Partners (A Firm)
[2023] EWHC 624 (Comm)

- Considering of scope of duty and duty nexus in the context of a summary judgment / amendment application
- C2 says it had reached an oral agreement with developers for payment of a finders fee of £1m and that D was instructed to (but failed) to formalise this.
- C2 says that D told it that it would be 'protected' in its dealings with the developer, and therefore C2 did not arrange development finance in case needed. When the developer 'renege'd' on the agreement on the day of completion, C2 therefore had no option but to proceed and accept a lesser finders fee.
- C2's alternative claim is for loss of profit resulting from the loss of the development
- On the pleaded case, the purpose of retaining D was to procure a binding agreement
- Claim for loss of profit struck out having regard to the scope of duty and the 'duty nexus'

BDW Trading Ltd v URS Corp Ltd
[2024] KB 827

- BDW, a developer, engaged URS for structural design in two major developments
- Following the Grenfell Tower disaster in 2017, BDW discovered serious structural defects in their developments, leading to significant safety concerns.
- BDW incurred substantial costs for investigations and remedial works after discovering the defects in 2019, despite no longer owning the buildings.
- On appeal: Did the judge at first instance incorrectly determine that BDW's losses fell within URS's duty of care?

BDW Trading Ltd v URS Corp Ltd
[2024] KB 827

Noting, per Coulson LJ:

- *I am not persuaded that Manchester BS [2022] AC 783 has any direct application to a case of this sort. The decision of the majority in Manchester BS, which at para 6 sets out the six-stage checklist, is designed to provide a useful way of analysing whether an alleged duty of care properly correlated to the harm claimed. It was, I think, primarily designed to analyse duties of care alleged to arise in novel situations which had not previously been considered by the courts, or where the type of loss claimed was unusual or stretched the usual boundaries imposed by the law. The checklist was not primarily intended to be applied by rote to the well-known and much-reported standard duties of care...*
- But sets out "...a useful checklist which does, even in a conventional case like this, act as something of a sanity check."

BDW Trading Ltd v URS Corp Ltd
[2024] KB 827

Court had been right at first instance was right to conclude that:

- ...the law imposed upon URS, the structural designer, a duty to take care was the risk of economic loss that would be caused by a construction of a structure using a negligent design such that it was built containing structural deficiencies or defects.

Afan Valley Ltd v Lupton Fawcett
[2024] EWHC 909 (KB)

- C alleged that LF ought to have advised C (under previous ownership) that investment schemes were UCIS
- Had LF done so, the schemes would not have been promoted
- The schemes had been promoted, Cs had received monies from investors, but the monies had been dissipated on account of alleged 'fraud' on the part of Cs under previous ownership / control
- Cs had received the same amounts of money which it had to repay to investors, but no longer had the money and yet faced claims from investors for their return.
- Can Cs recover such losses from LF?

Afan Valley Ltd v Lupton Fawcett
[2024] EWHC 909 (KB)

- The case involved both arguments as to whether there was 'loss' at all, but also as to scope of duty and the duty nexus question
- As to the latter
 - ...the consequential losses arose from the way in which the monies were subsequently used by the Claimants, but the duty of care pleaded by the Claimants does not extend to advising as to the way in which the investment or loan monies would or could be used by the Claimants, including (but not restricted to) misuse by Mr Woodhouse.

Life after MBS

Points to note

- MBS is a tool to consider scope of recoverable loss where there is not otherwise a clearly established line of authority
- Issues of scope of duty and duty nexus fall to be considered as part of a broader approach
- Clarity as to purpose is of central importance, and purpose ought to be clearly considered, clearly defined, and pleaded.



Rory Dillon MBA MRICS FNARA
Managing Director
Fletcher Bond - Chartered Surveyors

“The Surveyors Perspective”



Rory Dillon BSc (Hons) MBA MRICS FNARA
Managing Director
Fletcher Bond - Chartered Surveyors

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M 07525 631 769

Rory set up Fletcher Bond in 2016 and has over 18 years' experience in commercial and residential property, agency, valuation, strategic asset management, debt advisory, and development.

Rory also sits on the council for NARA, The Association of Property and Fixed Charge Receivers.



Pépin Aslett
St John's Buildings Chambers

“Running collective claims in professional negligence actions”

Pépin Aslett

Head of the Business and Property Team

Call: 1996



✉ pepin.aslett@stjohnsbldings.co.uk ☎ 0161 214 1500

Overview

“Pépin has detailed knowledge of data protection litigation. He is also a very precise and persuasive advocate, the type of advocate judges trust.”

— Legal 500, 2025 (IT, Telecoms and Data Protection)

“Pépin has an ability to foresee potential issues in complex data matters and provide practical and insightful solutions to secure the best possible outcome for his clients. He has a calm yet compelling presence in court and delivers a high standard of representation at every attendance.”

— Legal 500, 2025 (Commercial Litigation)

Pépin Aslett of St John's Buildings is a skilled commercial and chancery practitioner, noted for his expert handling of complex and high-value disputes. He is regularly instructed in tricky banking and finance matters and has experience appearing in both the High Court and the Court of Appeal.

Strengths: “Pépin is a strong finance and banking junior who produces great written work.”

— Chambers UK Bar, 2025 (Banking and Finance)

Strengths: “He is highly regarded in unfair relationship-type cases.”

“Pépin's presence in court is compelling. He maintains an air of calm whilst making the strongest of arguments, and he is persuasive.”

“He provides excellent advice that is very practical.”

— Chambers UK Bar, 2025 (Commercial Dispute Resolution)

Pépin Aslett is a well-respected barrister acting in a broad range of commercial disputes, including contract, company and fraud claims. He is also qualified at the Bar of Bermuda.

Pépin is a skilled commercial and chancery practitioner, noted for his expert handling of complex and high-value disputes. He is regularly instructed in tricky banking and finance matters, and has experience appearing in both the High Court and the Court of Appeal.

Pépin has a well-established reputation as a Senior Junior specialising in commercial litigation and data and information law with an emphasis on major and complex litigation. His extensive experience is well suited to disputes spanning many disciplines and he takes a commercial and pragmatic hands-on role to develop case tactics and strategy. He regularly acts as part of a team of KCs, juniors and relevant expert professionals.

In addition to appearing in the Court of Appeal and High Court in England and Wales, Pépin has appeared in Supreme Court of Gibraltar and the courts in Bermuda, where he practised as an Attorney for three years.

Pépin heads up the Business and Property Team in Chambers, and is regularly quoted in the press in relation to aspects of his expertise.



Data & information law

Cases

Farley (formerly CR) and Others v Paymaster (1836) Ltd (t/a Equiniti) [2024] EWHC 383 (KB): claim by hundreds of police officers whose pensions data was sent to out of date addresses.

Metropolitan Police Data Breach: acting for thousands of police officers and staff following a breach of ID and warrant card data by a digital services provider.

Liverpool University Hospital Foundation Data Breach: acting for multiple staff members following staff records being sent out by email in error.

Capita Data Breach: acting for multiple claimants in an action against Capita following a personal data hack affecting hundreds of thousands of individuals.

JD Sports Data Breach: acting for multiple claimants in an action against JD Sports following a cyber-attack in early 2023 affecting circa 10 million individuals.

Dixons Carphone (DSG Retail Limited) Data Breach: acting for hundreds of claimants in a multi-party action against DSG relating to a major data breach of Curries PC World and Dixons Travel affecting over 5.6 million payment processing card details.

Cambian Data Breach: acting for numerous data subjects following a serious data breach involving the compromise of personal data, including applications to foster children in a claim against Cambian, one of the largest children's social care providers.

Southern Water Data Breach: retained by over 100 customers following a personal data breach in January 2024.

Major Airline Data Breach: advice to ATE insurers in respect of a data breach by a major airline affecting 9 million individuals.

Bounty Data Breach: advice in relation to advancing multi-party claims against Bounty (UK) Limited following the ICO's finding that Bounty had shared the personal data of over 14 million individuals.

Loqbox Data Breach: acted for multiple claimants in an intended claim against the credit score builder, Loqbox Savings Limited, following a cyber-attack in which personal data was accessed.

Optionis Group Data Breach: acting for claimants in relation to claim against Optionis Group following a cyber-attack leading to tens of thousands of contractors' personal data being leaked on to the dark web.

DivideBuy Data Breach: acting for around 1,000 claimants in a claim against interest free credit provider, DivideBuy, following a data breach.

South Staffordshire Water Data Breach: acting for multiple claimants following a personal data breach on 22 August 2022.

Tesco Equal Pay Litigation: advice in connection with subject access requests made by litigants concerning the equal pay litigation against Tesco.

Amersi v CMEC UK Ltd and Leslie: acted for former MP, Charlotte Leslie and the Conservative Middle East Council in defending a high profile claim brought by Mohammed Amersi in relation to a data subject request.

Instructed by a Local Authority to act in the interests of children in restraining the broadcast of a television programme relating to the high-profile murder of their mother by their father.

Advised a non-departmental public body on their response to the Information Commissioners' Office following data protection and freedom of information requests.

Advised a firm of solicitors following their professional advisers divulging private and confidential financial information online in error.

Acted for an individual in relation to a long-running data protection claim against CAFCASS.

Banking & finance

Cases

Dickinson v UK Acorn Finance Ltd [2015] EWCA Civ 1194; [2014] EWHC 3856 (Ch): whether it was an abuse of process to raise issues under the Financial Services and Markets Act 2000 rendering a loan unenforceable.

Numerous claims against financial advisers under the Financial Services and Markets Act 2000 for substantial losses due to advice given.

Watchstone (formerly Quindell) Litigation: multi-million pound securities fraud litigation on behalf of hundreds of investors against an AIM listed company. Led by Philip Marshall KC.

Acted on behalf of multiple claimants in pension mis-selling claims relating to investments in tree plantations in Cambodia and Costa Rica.

Bevin v Datum Finance Ltd [2011] EWHC 3542 (Ch) (Peter Smith J): acted in the leading case on burden of proof in unfair relationship claims in the Consumer Credit Act 1974 (as amended).

Acted for multiple claimants in claims against a bank concerning breach of contract claims in relation to interest rates.

Hodgson v Lipson [2009] EWHC 3111 (QB): acted for a lender in respect of a disputed debt of £36m on the issue of certainty of contractual obligations.

K Ltd v National Westminster Bank plc (HM Revenue & Customs and the Serious Organised Crime Agency intervening) [2007] 1 WLR 311: led in the Court of Appeal by Barbara Dohmann KC and David Berkley KC in a leading case on the meaning of 'suspicion' in s 328(1) Proceeds of Crime Act 2002 and whether evidence to be provided by Bank as to 'suspicion'.

Commercial & chancery litigation

Cases

Advice and representation for the supplier of a Covid-19 "smart mask" in a multi-million pound manufacturing dispute.

Multiple Claimants v WSL and Ors [2018]: substantial action by group of disappointed international investors against solicitors for multi-million pound losses following loss of deposits after failure of a Nevis insurer.

Advised significant biscuit manufacturer/supplier on competition law issues.

Obtained summary judgment in the Technology and Construction Court in a product liability claim against a pet food manufacturer for alleged loss of several pedigree animals.

Acted on behalf of international hydraulic pipework supplier in a supply of goods claim concerning alleged metallurgical failure of a hose assembly causing significant losses.

Acted for a director on an appeal to the Court of Appeal against a finding of breach of fiduciary duty on the basis that there was no causation of loss.

Mehta v J P Fernandes S.A [2006] 1 WLR 1543: Acted in the leading case on e-mail signatures in guarantee cases.

Advising insurer on grounds to avoid and/or repudiate a D&O policy following a BIS and SFO investigation and the failure to disclose prior litigation.

BLOCKCHAIN TECHNOLOGY

Pépin has a particular interest in the difficult and complicated issues surrounding the use of smart contracts on a blockchain and how any disputes that do arise may be resolved.

GROUP LITIGATION/PROCEDURAL LAW

Particular expertise providing advice and representation in relation to complex disputes involving multiple parties and actions subject to a Group Litigation Order.

CASES

See the various data breach cases above.

Advice and representation to thousands of claimants in the 'diesel-gate' claims relating to Mercedes, Nissan and Renault vehicles.

The Sonae Group Litigation [2015] EWHC 2265 (QB): 18-day trial of 20 test cases (over 18,000 claimants in total) for damage caused following a serious fire. Led by Michael Redfern QC and Nick Bacon QC on costs points.

Dickinson v UK Acorn Finance Ltd [2015] EWCA Civ 1194; [2014] EWHC 3856 (Ch): whether it was an abuse of process to raise issues under the Financial Services and Markets Act 2000 rendering a loan unenforceable.

Acting for multiple claimants in claims against a bank concerning breach of contract claims in relation to interest rates.

Nolan v Davenport [2006] EWHC 2025 (QB): application to strike out an application to set aside judgment brought very late in the day.

BF & M Litigation: acted (as an attorney) in Bermuda for 17/1000 shareholder defendants sued by the liquidators in Bermuda Fire & Marine Insurance Company Limited (in Liquidation) and Others v BF & M Limited and Others, a multi-million dollar reinsurance insolvency case following the collapse of BF & M owing \$450m, ultimately settled mid-trial for \$35m.

Construction & property

Cases

Acting for a sub-contractor in a multi-million pound dispute concerning the laying of high voltage cables at a Scottish windfarm.

Quilter v Hodson Developments Ltd [2016] EWCA Civ 1125: whether, following misrepresentation inducing a contract a vendor or purchaser should benefit from a later increase in value.

West v Sunset Close Management Ltd: Seven day trial before the Chief Justice in the Supreme Court of Gibraltar (followed by a two-day appeal to the Court of Appeal for Gibraltar) relating to the enforcement of breaches of covenants in a residential lease.

Recently acted for a public figure claimant in a substantial claim against a developer for defective property works to a multi-million pound residential property.

Presently defending an architect's negligence claim in respect of a £3.6m private residence.

Dignan v Watt [2016] EWCA Civ 235: appeal following trial as to whether an estoppel operates in relation to a predecessor in title.

Oakglade Investments v Dhand [2012] EWCA Civ 286: readiness to complete upon serving a notice to complete. Led in the CA by Christopher Nugee QC.

Acted for multiple claimants in the TCC in an action for recovery of land deposits in relation to substantial delays in the construction of a city centre development.

Intellectual property

Pépin has considerable experience in Intellectual Property disputes, including copyright, trade mark, design rights and associated torts of passing off or infringement. This experience extends into his knowledge of data breaches and using illegally obtained information.

Among this experience, he acted for the market leader in the sale and distribution of electronic cigarettes in a breach of trademark and passing off claim in the High Court, including various domain name issues.

Insolvency

Re Idessa (UK) Ltd [2011] EWHC 804 (Ch); [2011] B.P.I.R. 957: Secured judgment of over £1.4m at trial against a director and de facto director guilty of misfeasance and wrongful trading.

Advice and representation on a £3m misfeasance claim against a former director following the sale of a property.

Tatch & Anor v Claughton (CA) [2007] EWCA Civ 559: led by Clive Freedman KC in the Court of Appeal in a case on jurisdiction in insolvency appeals where a High Court Judge sits in the County Court.

Bradburn v Kaye [2006] BPIR 605 (Ch): acted for debtor on an appeal against a bankruptcy order due to a failed IVA.

Commercial fraud

Acting for the claimants in a widespread commercial fraud claim valued at £7m, as part of which a worldwide freezing injunction was secured, including over crypto-assets.

Watchstone (formerly Quindell) Litigation [2017-]: multi-million pound securities fraud litigation on behalf of hundreds of investors against an AIM listed company. Led by Philip Marshall KC.

Company

Advice and representation in relation to a wide range of company law issues.

Regularly acts in relation to shareholders' petitions. The last one that went to trial involved a company with assets worth £15m-£22m and settled half way through an eight-day trial.

Memberships

- Northern Circuit
- Business & Property Courts Forum Committee
- Northern Business and Property Bar Association Committee
- Law Society Civil Litigation Committee

Publications

- *You can't be serious: assessing triviality in data breach claims.* Communications Law: Comms. L. 2023, 28(1), 9-15
- *The destruction of commercial documents.* Company Lawyer: Comp. Law. 2003, 24(12), 357-361
- *Cross-border asset protection: an offshore perspective.* Journal of Financial Crime: J.F.C. 2003, 10(3), 229-245

Legal Directory Recommendations

Strengths: "*Pépin Aslett has KC-level ability. Instruct him now before he becomes a silk!*" Chambers UK Bar 2024 (Banking and Finance)

Strengths: "*Pépin is a really good, technical lawyer.*" Chambers UK Bar 2024 (Commercial Dispute Resolution)

"*Pépin has considerable knowledge and experience in the data protection field. A persuasive advocate who has the trust of the court.*" Legal 500 2024 (IT, Telecoms and Data Protection)

“Pépin is very strong technically and gives good, clear advice in the difficult work of structuring group litigation. He is a leading light.” Legal 500 2024 (Commercial Litigation)

“Pépin has a very sharp mind and he is a master tactician. He is able to provide first class advocacy and legal advice as well as ideal strategic and commercial advice. He is one of the best senior junior barristers, he never backs down and he is happy to take on silks when required. His rapport with clients is excellent and he always fits right into a team. His rapport with clients is perfect: charming and professional at the same time.” Legal 500 2023

Strengths: *“Pépin is a really good, technical lawyer.”* Chambers UK Bar 2023

Strengths: *“He is very forensic and detailed in his approach.” “He is a very sharp advocate and a very proficient senior junior. He is hugely confident and formidable in court.”* Chambers UK Bar 2022

Strengths: *“I regard Pépin very highly. He has a phenomenal ability to deal with property and insolvency cases and produces very detailed skeleton arguments. He is very sensible and bright and doesn’t take bad points.” “He is a very sharp advocate and a very proficient senior junior. He is hugely confident and formidable in court.”* Chambers UK Bar 2022 (Commercial Dispute Resolution)

“Recommended Expert” Legal 500 2022

Strengths: *“His knowledge is encyclopedic.” “Absolutely excellent: very thorough, totally unflappable and a very tough opponent.” “His attention to detail stands out. He is good at thinking ahead of the game and leaves no stone unturned.”* Chambers UK Bar 2021 (Banking & Finance)

Strengths: *“He has a good command of the law and great attention to detail, and his skeleton arguments are very persuasive and concise.” “He is an articulate and experienced senior junior. He has great tactical skills and good commercial judgement.” “He is very knowledgeable, thorough and authoritative.”* Chambers UK Bar 2021 (Commercial Dispute Resolution)

“He is a formidable advocate and very skilled on his feet. His professionalism is second to none and having worked very closely with Pépin on heavy matters his ability to understand every detail of a complex case is very impressive.” Legal 500 2021 (Commercial Litigation)

Strengths: *“An exceptional junior advocate.”* Chambers UK Bar 2020 (Banking & Finance)

Strengths: *“He’s a smooth and polished advocate.” “He’s skilled, personable and dedicated to achieving the best result possible.”* Chambers UK Bar 2020 (Commercial Dispute Resolution)

“Technically superb and a great advocate.” Legal 500 2020

“He is a joy to work with – he is very thorough and very, very good at the paperwork.” Chambers & Partners 2019

“Extremely bright and an exceptional advocate.” Legal 500 2019

Strengths: *“He is a good draftsman and has a very good eye for detail.” “He has very good technical knowledge and an ability to adapt that knowledge to specific cases.”* Chambers & Partners 2018

“An experienced and forceful advocate.” Legal 500 2017

“Recommended for commercial and traditional Chancery matters.” – Legal 500 2016

“In conference, he has an excellent manner with clients.” – Legal 500 2015

Pépin has previously been described by the Legal 500 as having “*an excellent legal brain*”, “*an excellent eye for fine detail*” and being “*a star in the making; very bright and clear on paper as well as being a clever advocate.*”

News

3rd February 2025

Case Analysis by Pépin Aslett and Lucas Gregory

22nd November 2024

Case Analysis by Pépin Aslett and Lucas Gregory

17th October 2024

Chambers UK Bar 2025 listings

2nd October 2024

Legal 500 2025 Rankings

26th February 2024

Pépin Aslett to speak at MLS AI Conference

21st July 2023

Pépin Aslett secures £6.3m worldwide freezing order over assets including cryptoassets



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Sheffield

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Liverpool

38 Vernon Street, L2 2AY

DX: 14227 Liverpool

Tel: 0151 243 6000



Collective Redress in Professional Negligence Claims



St John's Buildings

Pepin Aslett

Head of the Business and Property Team



Common Claims

- Off-plan property purchases (eg: solicitors)
- Financial services mis-selling (eg: IFA, broker)
- Tax scheme advice (eg: accountant, IFA)
- Widespread negligent misstatement (eg: accountant)



Relationships

Cs

- Client to lawyer
- Client to funder
- Client to client
- Lawyer to lawyer
 - *Defendant firm*
 - *Lead Solicitor*
 - *Satellite firms*

Planning

- Resources (staff, IT, capital)
- Plan to the end
- Onboarding and client care
- Information gathering
- Costs planning

Inter-Claimant Issues

- Litigation Management Agreement (10+)
- Steering Committee
- Confidentiality and cross-disclosure
- Common interest privilege
- Settlement
- Discontinuers

Litigation Architecture

- GLO
- GLO Lite
 - *'Omnibus' claim form (Morris v Williams & Co)*
 - *Split trial*
 - *Test claims*
- Allocation
- Representative claims
- Get directions from the court early on

Settlement

- Authority
- Damages Matrix
- Fractional Settlement Scheme
- Global settlement models
- Defendant concerns

Be careful...

- Plan, plan and then plan a bit more
- Claimant Questionnaires and 'leading'
- Limitation
- Service



Thank you!



Hannah Williams
Partner
Kennedys

“A Defendants’ perspective”



Kennedys

Hannah Williams

Partner

Hannah.Williams@kennedyslaw.com

07738 763 214

Hannah is a partner and solicitor advocate in our financial lines and professional indemnity team, who works out of London and Manchester. Hannah also sits on our Global ESG Steering Group.

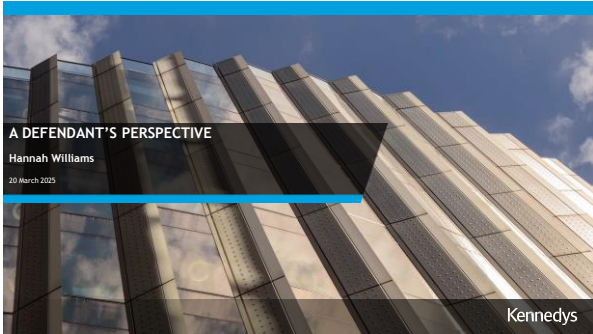
Hannah advises insurers and reinsurers on coverage issues and policy disputes, with a focus on professional indemnity, directors' and officers' liability and climate litigation. Hannah also acts on behalf of insurers and policyholders on a range of complex and high-value claims against D&Os and professionals, often with cross-jurisdictional elements. Hannah is particularly known for her work with clients in the energy and construction sector - primarily the defence of contractors, engineers, architects and surveyors.

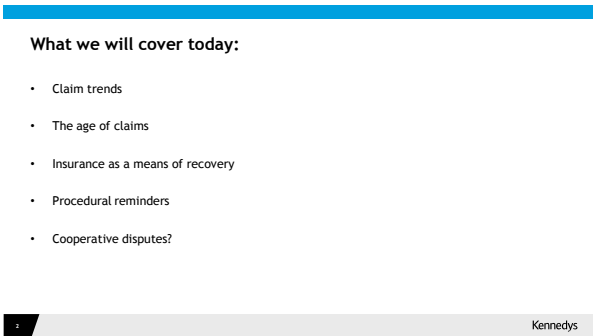
Hannah's extensive experience in the London insurance market has included two secondments at a top-five insurance broker and a leading worldwide insurer. Hannah has also spent time working in Hong Kong.

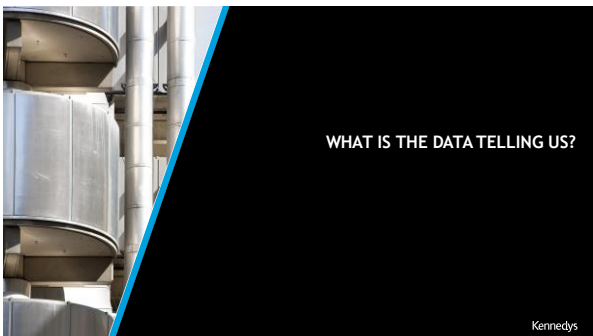
Hannah is a representative for the Forum of Insurance Lawyers' (FOIL) D&O sub-committee and regularly speaks at market events and is reported in the insurance press.

Hannah contributed to the writing of Kennedys' 'Global forecast 2025: Negotiating the interconnection of evolving risks' report, published in February 2025.

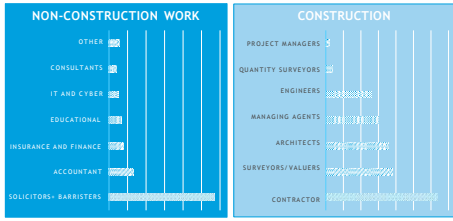
Qualified in England & Wales in 2012/ Qualified as a Solicitor Advocate in 2014 / Qualified in Northern Ireland in 2018



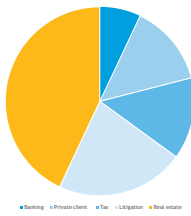




Professional indemnity claims in 2024



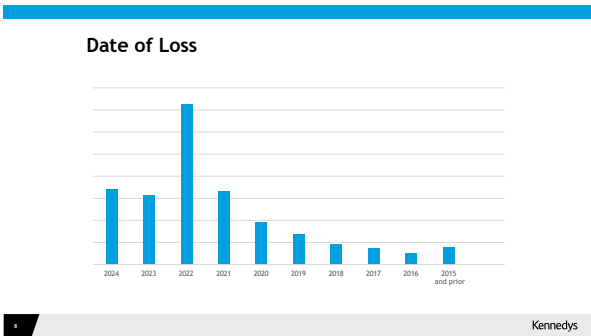
Practice areas for solicitor claims



Claims by prospective clients of solicitors

- *Miller v Irwin Mitchell LLP* [2024] EWCA Civ 53
- "No difficulty" in accepting that the firm would expect callers to rely on the information provided by the helpline and it would be reasonable for callers to do so
- However, the firm's responsibility here was narrow - to provide preliminary advice of a limited and high level nature.





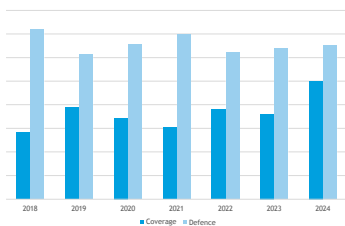
Why are we seeing 'older' claims?

- Section 32(1)(a) Limitation Act 1980
- *Seedo v El Gamal and others* [2023] EWCA Civ 330
 - the question is when the claimant discovered (or could reasonably have discovered) the fraud as found by the court, rather than the fraud as pleaded by the claimant in its statements of case
 - where a claimant is deceived by more than one lie in connection with a transaction, the subsequent lies will not start a new limitation period running unless they give rise to a separate cause of action

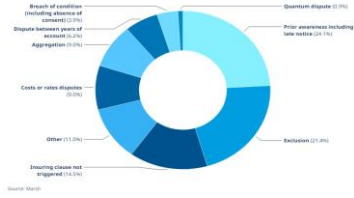
Why are we seeing 'older' claims?

- Building Safety Act 2022
 - For works completed before 28 June 2022, the limitation period is 30 years
 - For works completed on or after 28 June 2022, the limitation period is 15 years
 - For works completed after 28 June 2022, the scope of the DPA is extended to cover not just the provision of new dwellings, but also to any work in relation to a dwelling





Principal reasons for disputed professional indemnity (E&O and civil liability) claims



Direct action against Insurers

- *Scottish Gas Network PLC v QBE UK Ltd* [26.09.2024]
 - Due to a default judgment already obtained against the policyholder, the only line of defence available to insurers is the argument that the liability is not covered or excluded from the policy
- *Roger Leggett & 40 Others v American International Group UK Limited* [12.02.25]
 - AIG's policy only responded to a judgment obtained against an insured entity if that entity was the one responsible for the damages awarded

Direct action against Insurers

- *Reidweg v HCC International Insurance plc* [2024] EWHC 2805 (Ch)
 - Insurer sought to pursue a contribution claim in its own capacity against another professional: a law firm which the claimant. The issue was whether the liability would be for the "same damage."
- "I consider that the purpose of the 2010 Act is to provide a mechanism for a claimant to pursue an insurer directly in respect of the liability of its insured, and for the claimant to stand in the insured's place for that purpose. The insurer's liability is still that which flows from its obligations to the insured, which can only be to indemnify the insured against its liability to a third party. The insurer does not become liable to the third party for the damage caused or allegedly caused by its insured, which it did not inflict."*



PROCEDURAL REMINDERS

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Multiple claims on the same claim form

- *Niprose v Vincents Solicitors* [2024] EWHC 801 (Ch)

"... it is my experience that the court is increasingly being confronted with extreme attempts to bring claims on behalf of multiple claimants, or to sue multiple defendants, in one action. In such cases, in my judgment the court should not hesitate to use its general powers of case management (under CPR 3.1) to direct that specific parts of the proceedings should be dealt with as separate proceedings. Whilst it may be convenient to join in one claim all the purchasers of units in a single development who wish to sue a single firm of solicitors or licensed conveyancers, who used the same, standard-form documentation in connection with their respective purchases, in my judgment it is stretching the limits of the 'convenient disposal' test to join claims against different conveyancers - some solicitors and other licensed conveyancers - who used very different forms of documentation in a single set of proceedings. I am also concerned that it may constitute an abuse of the rules governing the payment of court fees on starting court proceedings."

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Legal professional privilege

- *Al Sadeq v Dechert LLP* [2024] EWCA Civ 28
 - Litigation privilege is not confined to parties to litigation
 - Legal advice privilege will apply where lawyers are engaged to conduct an investigation
 - The iniquity exception - need a prima facie case
- *Gorbachev v Guriev* [2024] EWHC 622 (Comm)
 - Cherry picking rule

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Without prejudice privilege

- *Ocean on Land Technology (UK) Ltd v Land [2024] EWHC 396 (IPEC)*
 - Burden is on the party to seeking to establish that an exception applies
 - Establishing an exception will not necessarily mean that protection is lost for the whole of those negotiations.
- *Pentagon Food Group Ltd and others v B Cadman Ltd [2024] EWHC 2513 (Comm)*
 - No separate mediation privilege

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Practice Direction 57A

- *Fulstow v Francis [2024] EWHC 2122 (Ch)*
 - The judge decided he could have "no confidence" in the truthfulness of three witness statements relied on by the claimants due to their serial non-compliance with PD57AC, and therefore placed no weight on them
- *IlliquidX Ltd v Altana Wealth Ltd [2024] EWHC 2191 (Ch)*
 - The court ordered the claimant to redraft two witness statements

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Expert evidence

- *Glover and another v Fluid Structural Engineers & Technical Designers Ltd and others [2024] EWHC 1257 (TCC)*
 - The High Court has granted the claimants permission to change experts following their solicitors' admitted interference with the drafting of the experts' joint statement, on the basis that privilege was waived over the solicitors' comments on the drafts

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Assessment of solicitor fees

- *Oakwood Solicitors Limited v Menzies* [2024] UKSC 34
 - The Supreme Court held that "payment" does not merely comprise the transfer of funds to the firm's office account. It also "requires an agreement [by the client] to the sum taken", either expressly or inferentially by conduct

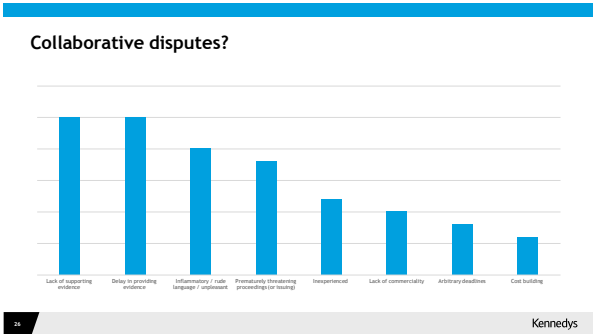
Third Party Litigation Funding

- *R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal*
- Supreme Court held: Litigation funding agreements are damage-based agreements and therefore unenforceable
- Litigation Funding Agreements (Enforceability) Bill
- Group actions - Cornerstone's Securities Class Action Filings 2024 Midyear Assessment - 112 securities class action lawsuits (steady) with potential damages of USD185 billion (55% increase)


Access to court documents

- Revised rule 5.4C to allow parties' witness statements, expert reports and skeleton arguments becoming public at a much earlier stage of proceedings





Any questions?



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Kennedys



Victoria Morrison-Hughes
Integral Costs

“The extended Fixed Recoverable Costs regime”



Victoria Morrison-Hughes

Managing Director

Costs Lawyer BA(Hons)

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0161 676 4201

Victoria is a qualified and regulated Costs Lawyer with a unique understanding of the operational and technical demands of legal businesses. Her principal areas of expertise include obtaining informed consent, retainer reviews, commercial litigation, clinical negligence, catastrophic injury, Court of Protection matters, and solicitor-client disputes. Victoria's primary focus is delivering exceptional client care and service while pursuing commercially sound resolutions for her clients.

Victoria prides herself on fostering strong working relationships with her clients, adopting a "we are in this together" approach. While she is technically proficient and highly knowledgeable, she avoids engaging in unnecessary legal arguments, always striving for the most practical and commercially viable outcomes.

As a confident and accomplished advocate, Victoria is equally effective in court and in the boardroom. She currently serves on the Council of the Association of Costs Lawyers and the Association of Costs Lawyers Training, contributing to the development and future direction of her profession.

Victoria's commitment to client care and integrity sets her apart. Guided by values instilled through her family background in retail, she applies a client-focused approach to her professional expertise. This ethos inspired her to establish Integral Legal Costs in October 2020, a firm that positions itself as an integral part of each client's

The extended Fixed Costs Regime

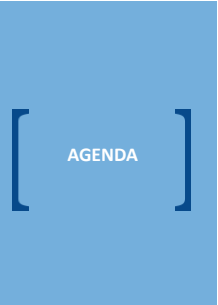
March 2025

"...necessary to make a whole complete; essential or fundamental legal team..."



EXTENDED FIXED RECOVERABLE COSTS

- Background to the Regime
- Advice to Clients - Informed Consent & Shortfall provisions
- Allocation to Track
- Assignment to Complexity Bands
- How to avoid xFRC entirely
- Pitfalls
- Fixed Costs Determination Procedure
- Practical Guidance



EXTENDED FIXED RECOVERABLE COSTS

Sir Rupert Jackson's 2017 report on Fixed Recoverable Costs
MOJ's 2021 Consultation thereupon.

Intention:

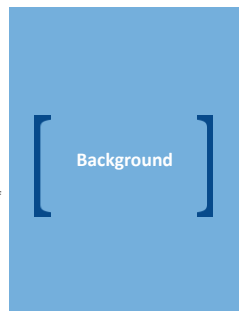
vertical and horizontal extension of FRC

Purpose :

to limit between the parties' costs across a broader spectrum of litigation and to higher value.

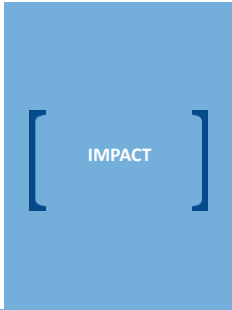
NOT

to interfere with the contractual charging arrangements between Solicitor and their client.



WHAT IS COVERED?

**ALL
Civil
and
Commercial
Litigation**
cases up to a value of **£100,000**
Including cases seeking non-monetary relief
where proceedings issued on or after 1
October 2023



Advice to Clients

"...necessary to make a whole complete; essential or fundamental legal team..."

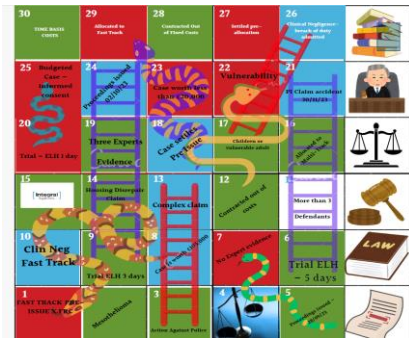


Regulatory Obligations

SRA Code of Conduct – Rule 8.7

"You ensure that **clients** receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any **costs** incurred."







Mr H TV Ltd –v- Archerfield Partners LLP
Master McCloud SCCO 21/10/19

“...if fees are incurred with consent then the solicitors are entitled to the benefit of a presumption that they were reasonable in amount and reasonably incurred.”

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Slater & Gordon –v- Edwards
Mr Justice Ritchie High Court 28/04/22

“...the burden of proof on informed consent which is a constant element of so many of these costs disputes – should lie with the solicitors who make the deductions – in other words it is for firms like Slater & Gordon to show that informed consent was given”



The Extended Fixed Costs Regime – March 2025

SHORTFALL PROVISION - Right to Charge More



Allocation to Track & Assignment to Complexity Bands



"...necessary to make a whole complete; essential or fundamental legal team..."

Allocation

Matters relevant to allocation to a track

CPR 26.13 (new) CPR 26.8 (old)

(1) When deciding the track for a claim, the matters to which the court shall have regard include –

- (a) the financial value, if any, of the claim;
- (b) the nature of the remedy sought;
- (c) the likely complexity of the facts, law or evidence;
- (d) the number of parties or likely parties;
- (e) the value of any counterclaim or additional claim or other Part 20 claim and the complexity of any matters relating to it;
- (f) the amount of oral evidence which may be required;
- (g) the importance of the claim to persons who are not parties to the proceedings;
- (h) the views expressed by the parties; and
- (i) the circumstances of the parties.



FAST TRACK – ALLOCATION

Claims that are not suitable for the small claims track

Claim which include a claim for monetary relief with a value not more than £25,000.

Trial will not last longer than one day

Oral expert evidence at trial limited to one expert per party per field – limited to two expert fields

FAST TRACK

ASSIGNMENT - CPR 26.14

(4) Subject to paragraph (5), the parties may agree the complexity band to which a claim is assigned.

(5) The court may direct that a claim be assigned to a different complexity band than that agreed by the parties, but shall have regard to the factors set out in rule 26.13(1).

6) A party must state on their directions questionnaire—

- (a) the agreed complexity band; or
- (b) where the parties disagree, the complexity band considered appropriate by that party, together with any relevant information in support

The New Rules –
Part 26

INTERMEDIATE TRACK

Claims that are not suitable for the small claims track nor the fast track

Claim which include a claim for monetary relief with a value not more than £100,000.

Trial will not last longer than three days

Oral expert evidence at trial limited to two experts per party.

Claim can be managed justly and proportionately.

Claim brought by one claimant against one or two defendants, or two claimants against one defendant.

No additional factors which would make the claim inappropriate for the intermediate track.

Non-monetary relief claims may be allocated to the intermediate track if the court considers it to be in the interests of justice.

Intermediate Track

**ASSIGNMENT – COMPLEXITY BANDS
- CPR 26.15 – FAST TRACK – TABLE 1**

Band 1	Band 2	Band 3	Band 4
Any claim where: (a) Road traffic accident related, non-personal injury claims and (b) Defended debt claims.	(a) Road traffic accident related, non-personal injury claims which are or should have started under the RTA protocol; and (b) Personal injury claims to which the Pre-action Protocol for Resolution of Package Travel Claims apply	(a) Road traffic accident related, non-personal injury claims to which the RTA Protocol does not apply; (b) Employer’s liability (accident) and public liability personal injury claims; (c) Possession claims; (d) Housing disrepair claims; and (e) Other money claims	(a) Employer’s liability disease claims (other than a claim for noise induced hearing loss); (b) Complex possession and housing disrepair claims; (c) Property and building disputes; (d) Professional negligence claims; and (e) Any claim which would normally be allocated to the fast track, but which is nonetheless complex

**ASSIGNMENT – COMPLEXITY BANDS
- CPR 26.16 – INTERMEDIATE TRACK - TABLE 2**

Different complexity bands for Fast Track and Intermediate Track set out in Table 1 and 2:

Band 1	Band 2	Band 3	Band 4
Any claim where: (a) Only one issue is in dispute and (b) The trial is not expected to last longer than one day including:- (i) PI claims where liability or quantum is in dispute (ii) Non PI RTA claims and (iii) Defended debt claims	Any less complex claim where more than one issue is in dispute including PI accident claims where liability and quantum are in dispute	Any more complex claim where more than one issues is in dispute, but which is unsuitable for assignment to complexity band 2, Including noise induced hearing loss and other employer’s liability disease claims	Any claim which would normally be allocated to the intermediate track, but which is unsuitable for assignment to complexity bands 1 to 3 including any personal injury claim where there are serious issues of fact or law

**REALLOCATION AND REASSIGNMENT
- CPR 26.18**

- (1) Subject to paragraphs (2) and (3), the court may on application or on its own initiative subsequently—
 - (a) reallocate a claim to a different track; or
 - (b) reassign a claim to a different complexity band.
- (2) Where—
 - (a) a claim is allocated to the intermediate track; and
 - (b) directions in respect of that claim have been given, the court may only reallocate the claim where it decides that there are exceptional reasons to justify doing so.
- (3) The court may only reassign a claim to a different complexity band, where—
 - (a) there has been a change in circumstances since a direction was made assigning the claim to a particular complexity band; and
 - (b) the court decides the change in circumstances justifies reassignment



HOW TO AVOID ALLOCATION TO INTERMEDIATE TRACK?

Case Type

Case Value – more than £100,000

Issues – what is an issue?

Trial length - longer than **three days**

Expert evidence – more than **two experts per party**.

Claim can be managed justly and proportionately.

Multiple parties – do you have more than **one claimant** against **one or two defendants**, or more than **two claimants** against **one defendant**.

Additional factors



Vulnerability



“...necessary to make a whole complete; essential or fundamental legal team...”

Practice Direction 1A (3)

A person should be considered as vulnerable when a factor – which could be **personal or situational, permanent or temporary** – **may adversely affect their participation** in proceedings or the **giving of evidence**



Practice Direction 1A (4)

- i. Age, immaturity or lack of understanding;
- ii. Communication or language difficulties (including literacy)
- iii. Physical disability or impairment or health condition
- iv. Mental health condition or significant impairment of any aspect of their intelligence or social functioning (including learning difficulties)
- v. The impact on them of the subject matter of, or facts relevant to, the case (an example being having witnessed a traumatic event relating to the case)
- vi. Their relationship with a party or witness (examples being sexual assault, domestic abuse or intimidation (actual or perceived))
- vii. Social, domestic or cultural circumstances

Factors which may cause vulnerability in a party or witness include (but are not limited to)

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VULNERABILITY – CPR PART 45.10

Claims for an amount of costs exceeding fixed recoverable costs – vulnerability

- (1) The court will consider a claim for an amount of costs (excluding disbursements) which is greater than the fixed recoverable costs referred to in Section VI, Section VII or Section VIII of this Part where—
- (a) a party or witness for the party is vulnerable;
 - (b) that vulnerability has required additional work to be undertaken; and
 - (c) by reason of that additional work alone, the claim is for an amount that is at least 20% greater than the amount of fixed recoverable costs.
- (Rule 1.6 and Practice Direction 1A make provision for how the court is to give effect to the overriding objective in relation to vulnerable parties or witnesses).
- (2) If the criteria in paragraph (1) are met, the court may— (a) summarily assess the costs; or (b) make an order for the costs to be subject to detailed assessment.

The New Rules – Part 45

The Extended Fixed Costs Regime – March 2025

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File Notes

"It is one of the duties of a solicitor undertaking litigation to keep a written record of instructions from a client. Telephone or face-to-face discussions are normally recorded in attendance notes, which have the dual purpose of recording the client's instructions and, when it comes to the recovery of costs from an opponent, supporting the costs claim."

Costs Judge Leonard; **Hulme -v- Handley Law Ltd** [2023] EWHC 616 (SCCO)



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Pitfalls?



"...necessary to make a whole complete, essential or fundamental legal team..."

CLAIMING FOR MORE THAN FIXED COSTS

- Exceptional circumstances CPR 45.9
- Vulnerability CPR 45.10
- Unreasonable Behaviour CPR 45.13

CPR 45.9, 45.10
or
45.13

FAILURE TO ACHIEVE MORE THAN FRC – CPR PART 45.11

- Failure to achieve costs greater than fixed recoverable costs**
- (1) This rule applies where—
- (a) costs are assessed in accordance with rule 45.9(2) or 45.10(2); and
- (b) the court assesses the costs (excluding any VAT) as being an amount which is in a sum less than 20% greater than the amount of the fixed recoverable costs.
- (2) The court will make an order for the party who made the claim to be paid the lesser of—
- (a) the fixed recoverable costs; and
- (b) the assessed costs..

The New Rules –
Part 45

Defendant's entitlement to costs – CPR 45.6 (2)(b)

The new Rules explicitly recognise the Defendant's entitlement to costs.

Quantification of Defendant's entitlement to costs is based on the:-

The value of the Claim for damages as stated in claim form without taking into account any deduction for contributory negligence and excluding any amount not in dispute, interest or costs.

And the Stage for the purpose of quantification of costs is taken by reference to the stage at which the case was discontinued



Defendant's entitlement – CPR 45.6

The new Rules explicitly recognise both parties pre-action entitlement to costs and the Defendant's entitlement to costs.

However, pre-issue some practical hurdles to overcome.

"It would be wrong in principle to penalise the Claimant for abandoning claims which the Defendants had demonstrated were not going to succeed, because to do so would be to penalise the claimant for doing the very thing which the Protocol is designed to achieve," Judge Coulson QC
McGinn -v- Wiltshire Contracts Limited [2005] EWHC 1419 (TCC)



How does xFRC affect costs recovery under Part 36?

If Claimant fails to beat Defendant's Part 36 offer:
Claimant entitled to Fixed Costs applicable on date at which the offer expired calculated by reference to the settlement value.

Claimant is liable to pay Defendant's fixed costs applicable at the date of judgment or acceptance LESS fixed costs to which the Claimant is entitled.

If Claimant beats their own Part 36 offer

Claimant entitled to Fixed Costs applicable on date at which the relevant period expired PLUS additional costs equivalent to 35% of the difference between the fixed costs for:

- a. *The stage applicable when the relevant period expires and*
- b. *The stage applicable at the date of judgment*



Fixed Costs Determination Procedure

"...necessary to make a whole complete; essential or fundamental legal team..."



Fixed Costs Determination

- Intended to be streamlined process
- Dealt with on paper without need for hearing
- Applies to all claims to which CPR 45 applies.
- Precedent U

CPR 45.64(1)

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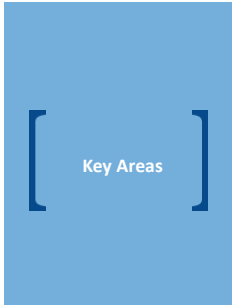
Practical Considerations

"...necessary to make a whole complete; essential or fundamental legal team..."



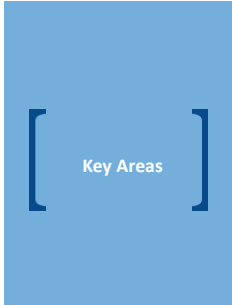
Practical Considerations

- Retainer - Shortfall provision
- Manage "Costs" Communications with Client; solicitor own client costs forecast/Budget
- Manage your clients – demanding clients
- Early collation of case merits and strategy
- Serious consideration at allocation stage – seek agreement.
- Detailed arguments in DQ as to allocation/assignment
- Vulnerable witness identification and policy. Establish an in-house procedure for identification



Practical Considerations

- Delegation of work within team –keep costs down
- Record time
- Record considerations around complexity
- Open communication with other side/court and client
- Courts so busy – are they really go to interfere
- Record considerations around value
- P36 discussions - *detailed conversations with client and document them in relation to the possible risk of rejecting a Part 36 offer pre-issue but then settle just before Trial i.e. Stage 1 -v- Stage 6 i.e. 14 days before Trial*



Any Questions?
hello@integrallegal.co.uk
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"...necessary to make a whole complete; essential or fundamental legal team..."



Questions and discussion

Chairman's closing remarks



1700-1900

***“Drinks sponsored by
Deans Court and St John’s Building”***

Total CPD – 7 hours

To complete your feedback form please go to:

<https://www.pnla.org.uk/event/pnla-conference-manchester-professional-negligence-liability-fighting-for-justice-20-march-2025/>



Notes: -

A series of horizontal dashed lines provided for taking notes.