



Paul McGrath

Year of Call: 1997

Practice Areas

- Civil Fraud
- Costs
- Credit Hire
- Employment
- Insurance
- Personal Injury
- Product Liability

Email:

pmcgrath@tgchambers.com

Awards



Experience

Paul's practice is generally split between the following main areas: insurance law (particularly motor), insurance fraud, personal injury / fatal accident, and consumer law. He also has considerable past experience of employment cases.

Insurance: Paul has significant and broad experience in this area. In relation to 'pure' insurance law issues, he has represented clients in relation to disputes between insurers, avoidance disputes between insured and insurer (including claims for contractual indemnity), disputes between insurers and third parties (e.g. issues arising under ss151-152 Road Traffic Act 1988), representations to third parties (such as the MIB, Financial Ombudsman Service, etc), and interpretation of insurance contracts and any resulting declaratory proceedings. His work has mostly been in connection with motor insurance, but he has also acted in cases involving disputes about life insurance and legal expenses policies. *Mason v TNT and Groupama Insurance* saw him acting for a successful insurer on a point of great significance to the industry: whether an insurer was liable for the 'same damage' as a tortfeasor for its (potential) breach of indemnity.

Paul also acts in insurance fraud cases (chiefly motor insurance). He has significant experience of drafting, advising and representing in the full range of fraud cases from the small opportunistic claims to large scale, nationwide, fraud rings. He also has considerable experience of declaratory proceedings,



recovery actions (including tort of deceit), enforcement actions and committal proceedings. He was recently in the Court of Appeal in *Hamid v Khalid and Co-Operative Insurance*.

Personal injury / fatal accident: his work involves predominantly Multi-Track cases in the County or High Court and also includes appellate work in the High Court and Court of Appeal. He is also regularly instructed to attend mediations and JSMs. He has considerable experience acting for cruise companies and airlines in relation to personal injury claims arising from incidents at sea (involving jurisdictional issues and issues under the Athens Convention and The Merchant Shipping Act 1995) and on board aircraft.

Consumer: Paul is targeted as a leading junior for many of the most significant consumer law cases and has appeared in the County Court, High Court and Court of Appeal. His work involves vast experience of credit hire cases, including those of the greatest value and / or significance, including the seminal case of *Burdis v Livsey*. His work also involves issues arising under the Consumer Credit Act, the Package Tour Regulations, the flight cancellation Regulations (EU Regulation 261/2004), the Sale of Goods Act, the Supply of Goods and Services Act and the Consumer Protection Act.

Employment: Paul has steered his practice away from employment to concentrate on the above mentioned areas. However, Paul has significant experience of employment litigation (mostly instructed by Respondents) and has made a great number of appearances in the Tribunal and Employment Appeal Tribunal. Paul continues to act for clients pro bono via the Bar Pro Bono Unit and has recently appeared in the Court of Appeal concerning the National Minimum Wage provisions.

Directories

Recommended as having a 'considerable expertise in a range of motor fraud cases, including those related to exaggerated claims, fundamental dishonesty and staged accidents' and noted for 'his strength in handling fraud ring matters'. He is noted to have a 'tremendously endearing court manner' and that 'Judges like him and he's persuasive'. He is also praised as being a 'great advocate who is excellent on technical points.' *Chambers & Partners, 2020*

Recommended in Tier 1, 'Personal Injury, Industrial Disease and Insurance Fraud' as "On top of his game - he is a leading expert in cases involving suspected fraud" *Legal 500, 2020 (Band 1, Insurance Fraud)*

'He is a very good lawyer with a strong expertise in road traffic insurance law, personal injury and fraud work.' *Legal 500, 2019*

"A persuasive advocate who is effective in his interaction with judges." "A well-respected practitioner." Noted as demonstrating "considerable expertise in a range of motor fraud cases, including those related to exaggerated claims, fundamental dishonesty and staged accidents. He is also noted for his strength in handling fraud ring matters." *Chambers and Partners, 2019*

Recommended as demonstrating 'considerable expertise' in motor fraud cases and employing 'enthusiasm and drive'. He is also noted to have an ability to 'slowly take the opposition apart in an almost surgical fashion rather than in a theatrical style - he's a silent assassin' and to be 'very strong both on paper and in court', knowing 'how to get the best result for the client' and good at 'understanding a large amount of information'. *Chambers and Partners, 2018*

Recommended in Tier 1, 'Personal Injury, Industrial Disease and Insurance Fraud' as 'Experienced in all manner of motor insurance fraud cases'. *Legal 500, 2017.*

"Recommended for personal injury, motor and credit hire work". *Legal 500, 2015*

"Very well regarded for all things personal injury, motor and credit hire". *Legal 500, 2014*

Paul McGrath is recommended as a leading junior for consumer law and described as being "noted for his 'deep knowledge of the issues'". *Legal 500, Consumer, 2013*

"Paul McGrath is praised for his 'robust and sensible advice'". *Legal 500, Employment, 2011*

Education

University of London LLB (Hons)
Inns of Court School of Law (BVC)

Cases

KAT V TORBAY COUNCIL
[2018] EWCA Civ 3045 (Court of Appeal)
13/11/2019

Barristers involved: Paul McGrath

Claim for National Minimum Wage pursued by foster carer providing emergency foster care. Whether salaried worker, whether unmeasured worker, whether 'on call' was time at work.

LAWRENCE V NCL (BAHAMAS) LTD ('THE NORWEGIAN JADE')

[2017] EWCA CIV 2222 (COURT OF APPEAL), [2018] 1 Lloyd's Law Rep 607; Lloyd's Maritime Law Newsletter (2018) 996 LMLN 1; Lloyd's Law Reporter 22 January 2018; [2016] EWHC (ADMLTY); [2016] 5 WLUK 109 (ADMIRALTY REGISTRAR, JERVIS KAY QC)

06.05.2016

Barristers involved: Paul McGrath

Claim in the Admiralty Division for an accident aboard a tender vessel. The judgment considers questions of the scope of the Athens Convention along with whether liability was established for an accident aboard a third party's vessel.

Hamid v (1) Khalid (2) Co-Operative Insurance

[2017] EWCA Civ 201

31.03.2017

Barristers involved: Paul McGrath

Alleged fraud case. Court of Appeal decision following an insurers appeal against a finding that an accident had been proven on a balance of probabilities. Guidance given on when an appeal Court can interfere, when an acquittal of fraud can be set aside and the factors to be borne in mind, adequacy of reasons and the role that proportionality might have to play in this and whether an adverse inference ought to have been drawn. Appropriate costs order when fraud pleading fails to be proven.

Chimel v Chibwana and Another

(unrep. HHJ Simpkins, Brighton CC) Available on Lawtel

22.11.2016

Barristers involved: Paul McGrath

Whether an insurer's admission made under the MoJ Portal is binding on insured in separate proceedings.

Churchill Insurance v Shajahan and another

(unrep. Mr Recorder Tidbury, Birmingham CC) Available on Lawtel

11.09.2015

Barristers involved: Paul McGrath

Tort of deceit case considering the appropriate award in a staged road traffic cases for exemplary damages, considering the relevant authorities and approaches in other Courts.

Zurich Insurance plc v Umerji

[2014] EWCA Civ 357

25.03.2014

Barristers involved: Paul McGrath

Instructed by a non-party to advise, and draft potential argument, on the significant points in relation to impecuniosity and whether insured benefits are to be left out of account in the assessment of compensation.

Dickinson v Tesco plc and others

[2013] EWCA Civ 36; [2013] All ER (D) 17 (the 'Autofocus Appeals')

03/03/2013

Barristers involved: Paul McGrath

Four tests cases in the Court of Appeal dealing with multiple issues of fraud, consumer law (particularly in relation to the hiring of vehicles in credit), and practice on appeals in relation to the introduction of fresh evidence.

Locke v Liddle

[2013] EWHC 2620 (QB)

20.06.2013

Barristers involved: Paul McGrath

Successful appeal. The normal rule was to order that costs be assessed forthwith. Under the CPR particular regard was to be had to proportionality. There was an element of proportionality in having all the costs dealt with on one occasion: it would be quicker to assess the costs at one hearing. However, that was not a sufficient reason to displace the normal rule. C was entitled to have his costs assessed in detail at the present stage. It was not pragmatic to award him costs and interest at a later date.

Ali v D'Brass

[2011] EWCA Civ 1594

23.11.2011

Barristers involved: Paul McGrath

Court of Appeal decision on apportionment in a road traffic case involving sudden braking.

Laleye v Community Service Volunteers

EAT / 0321 / 09 HHJ Birtles

2009

Barristers involved: Paul McGrath

Grievance procedures. Lengthy but intractable grievance was judged to frustrate the object of the statutory grievance procedure and thus not qualifying as a grievance and the claim was accordingly time-barred.

Mason v TNT and Groupama Insurance

(unrep. Oxford CC, HHJ Harris QC, lead case on insurance contribution) Available on Lawtel

06.08.2009

Barristers involved: Paul McGrath

Whether an insurer can be liable to a tortfeasor to contribute for its alleged breach of indemnity in dealing with the consequences of the tort. Meaning of 'same damage'.

Gydnia America Shipping Lines (London) Limited -v- Chelminski

[2004] EWCA Civ 871; [2004] ICR 1523; [2004] IRLR 725; [2004] 3 All ER 666; (2004) 148 SJLB 877 Times LR (20 July 2004); Independent LR (9 July 2004)

06.07.2004

Barristers involved: Paul McGrath

Appeals in employment cases: time limits and required documentation.

Croucher v Fire Brigade Union

[2004] All ER (D) 357

20.07.2004

Barristers involved: Paul McGrath

Appeal against a finding of unfair dismissal. Appropriate test. Considering Sainsburys Supermarkets v Hitt.

Burdis v Livsey

[2002] EWCA Civ 510; [2003] QB 36 (CA); [2002] 3 WLR 762 (Court of Appeal); [2001] 1 WLR 1751 (High Court) [petition to House of Lords refused: [2003] 1 WLR 394];

01.05.2005

Barristers involved: Paul McGrath

The seminal case on credit hire and credit repair and the appropriate measure of loss in such cases. Direct loss and consequential loss.

Publications

TGC Costs Newsletter Vol III

10/12/2018

Authors: Simon Browne QC Shaman Kapoor Mark James Richard Wilkinson Paul McGrath Richard Boyle Lionel Stride Ellen Robertson James Yapp Robert Riddell Matthew Waszak

Please see link below to the latest update from the TGC Costs Team.

You can view the publication on our website <http://tgchambers.com>

TGC Fraud Newsletter Issue VIII - July 2018

02/07/2018

Authors: James Henry Ellen Robertson Paul McGrath James Yapp Matthew Waszak Elizabeth Gallagher Tim Sharpe Edward Hutchin William Irwin Helen Nugent

Please see link below for Issue VIII of TGC Fraud Update, a publication we have set up with the stated aim of facilitating the sharing of information about decided claims involving issues of road traffic fraud and related matters.

You can view the publication at http://tgchambers.com/wp-content/uploads/2018/06/TGC041_Newsletter_Fraud_issue8_v1.pdf

TGC Costs Newsletter

17/05/2018

Authors: James Laughland James Arney Paul McGrath Shaman Kapoor Lionel Stride Sian Reeves Richard Boyle Matthew Waszak Ellen Robertson

Please see link below to the latest TGC Costs Newsletter.

You can view the publication on our website <http://tgchambers.com>

TGC Fraud Newsletter Issue VI - September 2017

21/09/2017

Authors: Anthony Johnson Paul McGrath Anthony Lenanton George Davies Ellen Robertson Robert Riddell William Irwin Matthew Waszak Alex Glassbrook

Please see link below for Issue 6 of TGC Fraud Update, a publication we have set up with the stated aim of facilitating the sharing of information about decided claims involving issues of road traffic fraud and related matters.

You can view the publication on our website <http://tgchambers.com>

TGC Fraud Updates

12/04/2017

Authors: Paul McGrath

The Use of Experts in the Employment Tribunal (EMIS publishing, 2002)

12/04/2017

Authors: Paul McGrath

Email, the Internet and the Law (EMIS Publishing, 2001)

12/04/2017

Authors: Paul McGrath

Various articles in publications such as the Solicitors Law Journal, New Law Journal, etc

12/04/2017

Authors: Paul McGrath

News

Dishonest litigant sentenced to 5 months' immediate custody for false personal injury claim

03/12/2019

Barristers involved: Paul McGrath James Henry

Rowena Collins-Rice sitting as a Deputy High Court Judge found Mr Hall guilty of contempt of court for making false statements on three documents verified by statements of truth. In addition to the five month custodial sentence, Mr Hall was ordered to pay the full amount of LV's costs of the committal proceedings, which came to over £21,000.

Mr Hall had claimed for whiplash injuries which he had allegedly suffered as a passenger in his grandmother's car on 28 February 2016. However, he was not in the car at the time and therefore did not suffer any such injuries.

Mr Hall approached solicitors who, with his authority, submitted a claim notification form, a claim form and particulars of claim, each verified by a statement of truth signed on his behalf. These three documents falsely alleged that he was a passenger in the car and suffered the injuries claimed, with a total value of no more than £5,000. After LV issued a defence alleging that his claim was dishonest and that he was not in the car, Mr Hall stopped actively pursuing the claim, but did not discontinue it either. After a year and a half, and with multiple orders made in the meantime, the court was required to strike out the claim. Following on from this decision, LV commenced these successful committal proceedings against Mr Hall.

During sentencing, Rowena Collins-Rice emphasised the seriousness of insurance fraud, which results in ordinary people paying higher car insurance premiums. She noted the gravity of drawing in the justice system by making false assertions in documents backed by statements of truth, which wastes court resources and negatively impacts genuine litigants.

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You can view the publication on our website <http://tgchambers.com>

TGC Fraud Update Issue VIII - July 2018

02/07/2018

Barristers involved: James Henry Ellen Robertson Paul McGrath James Yapp Matthew Waszak Elizabeth Gallagher Tim Sharpe Edward Hutchin Alex Glassbrook William Irwin Helen Nugent
Please see link below for Issue VIII of the TGC Fraud newsletter.

You can view the publication at http://tgchambers.com/wp-content/uploads/2018/06/TGC041_Newsletter_Fraud_issue8_v1.pdf

TGC appoints Pro Bono Champion

13/06/2018

Barristers involved: Paul McGrath

Chambers has a long history of participation in pro bono work and looks forward continuing to do so for the foreseeable future.

TGC Costs Newsletter

17/05/2018

Barristers involved: Shaman Kapoor Paul McGrath Richard Boyle James Arney James Laughland Sian Reeves Matthew Waszak Lionel Stride Ellen Robertson

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Refusal of late medical evidence overturned on appeal

13/03/2018

Barristers involved: Paul McGrath

Mr Justice Foskett accepted that CPR 3.9 was not directly engaged but was engaged as a result of the 'implied sanction', referring to (Regina (Hysaj)). The Judge also accepted that the Master had conflated the stages in the Denton analysis and had failed to appropriately take all of the circumstances of the case into account. The claim was put at a high value and the Defendant ought to be entitled to rely on medical evidence, despite its late filing / service. The Court in particular noted that the trial was some way off.

Court of Appeal to decide on Dispute over National Minimum Wage

18/01/2018

Barristers involved: Paul McGrath

Paul McGrath appears before Court of Appeal concerning a dispute over whether a contract foster carer was paid the National Minimum Wage. Paul McGrath was acting pro bono.

QOCS AND SET-OFF: In the balance

05/12/2017

Barristers involved: Paul McGrath

Paul McGrath highlights when defendants should consider obtaining an order and/or assessment of costs.

You can view the publication at

<http://lawjournals.co.uk/2017112875462/personal-injury-law-journal/qocs-and-set-off-in-the-balance#.Wia7JuSDPVg>

Paul McGrath appeared in the Court of Appeal on 23 and 27 November concerning the Athens Convention

27/11/2017

Barristers involved: Paul McGrath

The Court upheld the decision of the Admiralty Registrar. The neutral citation will be available soon. Lawrence v NCL.

TGC Fraud Update Issue VI - September 2017

21/09/2017

Barristers involved: Anthony Johnson Paul McGrath Anthony Lenanton George Davies Ellen Robertson Robert Riddell William Irwin

Matthew Waszak Alex Glassbrook
Please see link below for Issue VI of the TGC Fraud newsletter.

You can view the publication on our website <http://tgchambers.com>

TGC Costs Newsletter

04/07/2017

Barristers involved: Simon Browne QC Shaman Kapoor Paul McGrath Lionel Stride Sian Reeves Richard Boyle Matthew Waszak Piers Taylor Robert Riddell

2017 has already proved to be an extremely exciting year. We launched our sell-out one day costs conference in February which was attended by more than 250 delegates and presented on a number of critical topics: retainers, assignment, ATE premiums, proportionality, budgeting, Part 36, QOCS, fixed costs and assessment. We were particularly honoured to have speakers from the Court of Appeal, the SCCO, and the QBD. In case you missed it, the materials can still be found on our website at <http://tgchambers.com/news-and-resources/seminars/retainer-recovery-journey-modern-litigation/>.

We have had significant instructions in a high number of cases that continue to shape the future for the costs world. This newsletter aims to bring you the latest news (at the time of print) on the hottest topics including: how to hack through Article 10 and blag about additional liabilities (Flood/Miller/Frost), a review of New P in anticipation of BNM, substance not form on CFA retainers post-legal aid funding, a club-like search for logic in fixed costs, the Ps & Qs of QOCS, extension of pre-LASPO CFA and ATE to a post-LASPO appeal and assignment-lite (Plevin), the surviving power of set-off even in QOCS cases and, not least, the budget vs assessment battle (Harrison). In for a penny, in for a pound.

On the horizon is, of course, the long awaited Court of Appeal decision in BNM. I have prepared a skeleton argument in a parallel appellate case (Murrells) albeit at Circuit Judge level, but having had the paper fight, the parties have agreed to await the outcome of BNM. At the same time, the Court of Appeal shall be giving judgment on assignment of CFAs in Budana. No doubt those decisions will mark the trigger for our next publication.

Finally, I should take this opportunity to thank all of the contributors for their hard work, and my Associate Editors for all of their help and without whom this newsletter would not have taken off. Happy reading!

You can view the publication on our website <http://tgchambers.com>

Hamid v (1) Khalid (2) Co-Operative Insurance

10/04/2017

Barristers involved: Paul McGrath

Case: Hamid v (1) Khalid (2) Co-Operative Insurance [2017] EWCA Civ 201

Court: Court of Appeal, 2 March 2017 (hearing) and 31 March 2017 (judgment)

Judges: Lewison LJ, Henderson LJ

Counsel: Paul McGrath appeared for the Second Defendant, instructed by Kellie Lacey (Weightmans)

Appeal – Findings of Fact – Expert Evidence

The Claimant brought proceedings against the First Defendant and Second Defendant for personal injury, credit hire and associated losses. The Second Defendant denied the claim and, by way of an Amended Defence, pleaded that the collision did not take place as alleged and averred that the claim was fraudulent. The First Defendant admitted fault for the accident and sought indemnity from the Second Defendant by way of a CPR 20 additional claim for a declaration. The Second Defendant and Claimant both called expert engineers to give evidence. The evidence was taken concurrently (colloquially referred to as 'hot-tubbing'). Following a three day trial in Manchester CC, Recorder Howells allowed the Claimant's claim, dismissed the allegations of fraud, and assessed damages on conventional principles. The Claimant and First Defendant applied for costs on the indemnity basis on the grounds that the Second Defendant had pleaded, but failed to prove, fraud. The Judge ordered costs on the standard basis as the Second Defendant had not acted unreasonably given the expert evidence and other concerns held. The Second Defendant appealed against the Judge's decision allowing the claim and submitted that the Judge left out of account significant inconsistencies and troubling features, failed to provide adequate reasons for her decision and misevaluated the weight of the expert evidence. The Second Defendant received permission from a single Lord Justice on the papers and the matter was listed for a full appeal hearing. The appeal was resisted, and heard by the Court of Appeal on 2 March 2017. Judgment was handed down on 31 March 2017.

Held: That whilst there was force in the Appellant's submissions regarding the unsatisfactory nature of the evidence, it could not be said that the 'judge demonstrably failed to consider, or misunderstood, the evidence on these points' and that the Appellant did not surmount the high threshold of satisfying the appellate Court that it ought to interfere with her findings: applying *McGraddie v McGraddie* [2013] UKSC 58; [2013] 1 WLR 2477 at [1] to [6], *Henderson v Foxworth Investments Ltd* [2014] UKSC 41; [2014] 1 WLR 2600 at [58] to [68]. *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 at [114] to [115] and *Grizzly Business Ltd v Stena Drilling Ltd and anor* [2017] EWCA Civ 94 at [39] to [40]. The appeal was therefore dismissed and the decision of Mrs Recorder Howells upheld. The Court also gave guidance in relation to overturning acquittals of fraud at the appeal stage, citing with approval the decision of the Privy Council in *Akerhielm v De Mare* [1959] AC 789 (PC) at page 806 but drawing a distinction between 'cases where an appellate court substitutes a finding of fraud for an acquittal below, which will only happen in the rarest cases, and cases where a retrial is ordered, without the appellate court expressing any concluded view on the defendant's guilt' citing what was said by Fry LJ in *Glaiser v Rolls* (1889) 42 Ch D 436 at 459. The Court of Appeal rejected the application by the Claimant and First Defendant for indemnity costs pointing out that were telling points which might have led a different trial judge to the opposite conclusion: see paragraph 35.

Insurer's admission in Moj Portal binding on insured in separate proceedings

10/11/2016

Barristers involved: Paul McGrath Lionel Stride

Chimel v Chibwana and another, County Court at Brighton, 27 October 2016, HHJ Simpkins (DC) Kent & Sussex Courts)

RTA 30 January 2014. C's case was that she emerged from a minor road with reduced visibility (due to the parked van owned by D2) and was struck by D1's vehicle. D1 said the RTA was C's fault. D1 issued a CNF and C's insurers admitted liability in the response to the CNF without any stated reservation. The claim was later settled. Then C sued D1 and D2 in negligence. D1 applied to strike out the claim on the basis that it was an abuse of process to sue D1 when liability had previously been admitted. D2 also applied to strike out, attempting to rely on the same admission but also seeking summary judgment on the basis that there was no real prospect of success in succeeding on the facts of the case.

The District Judge struck the case out and also gave summary judgment to D2. The Claimant appealed.

The Claimant had not disclosed her insurance policy but argued that whilst the insurer did have actual authority to make an admission in the Moj Portal, this authority was strictly limited to admitting liability in a claim made against her or her insurers and did not in any way affect any claim that she might have. The Claimant argued that this was so as an insurer had an implied obligation not to prejudice the insured's rights and, further, the context of the Moj scheme made it clear that an admission was so limited to the claim made against it in the CNF presented.

The First Defendant argued that in absence of the policy the Court should infer that the insurer had actual authority to make a full admission of liability. In any event, the insurer clearly had ostensible authority to make the admission. The First Defendant also submitted that the reference to 'defendant' in the insurer response form was to the insured driver (not the insurer). Further, that such an admission was not confined to one claim made against the insured and / or insurer but was binding in all respects as to the issue of liability just as if the admission was made by the insurer outside the Portal.

The Judge accepted the First Defendant's submissions and held that (i) the insurer had actual and ostensible authority to make the admission; (ii) the reference to 'defendant' in the RTA1 response form was to the insured driver (disagreeing with Malak); (iii) the fact that the admission was made within the Portal was irrelevant, the key question being what was the scope of the admission; and (iv) any admission made under the Portal can be withdrawn pursuant to CPR 14.1B (not 14.1A) unless there has been a settlement based on the admission and thereafter the admission may not be withdrawn because this would be inconsistent with the settlement agreement unless this had been expressly dealt with in the settlement (preferring Ullah over Malak on this point). Accordingly the appeal was dismissed and the claim remained struck out as against the First Defendant.

The Judge held that D2 could not rely on the admission or settlement, his not being a party to it, however, upheld the Judge's decision on the basis that the claim against a stationary vehicle stood no real prospect of success on the particular facts of the case.