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Marcus Grant

Year of Call: 1993

Practice Areas

- Civil Fraud
- Clinical Negligence
- Credit Hire
- Insurance
- Personal Injury

Public Access

Undertakes Public Access work

Mediator

Qualified Mediator

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Awards

Experience

Marcus is ranked as a 'Star Individual' Personal Injury Junior Barrister in Chambers & Partners (London) 2022, as he was in 2021, 2020, 2019, 2018 and 2017.

He has been nominated for the Junior Pro Bono Barrister of the Year in the 2021 Bar Pro Bono Awards.

He was named Personal Injury/Clinical Negligence Junior of the Year in Chambers & Partners UK Bar Awards 2016 and was nominated as the 2017 Legal 500 Personal Injury and Clinical Negligence Junior of the Year.

His specialism is head injury, chronic pain and spinal litigation. He is noted for his leadership in exploring recent neurological and chronic pain developments in the Courts and is regarded for his insight into the nuances of the medicine and his tenacity in handling medical experts in his specialist areas.

In the last 12 months, he was Counsel in the QBD decisions in *Palmer v. Mantas & Liverpool Victoria Insurance Company* [2022] EWHC 90 (QB), *Stansfield v. BBC* [2021] EWHC 2638 (QB) and *Long v. Elegant Resorts* [2021] EWHC 1330 (QB). All three involved claimants recovering substantial damages for the consequences of mild traumatic brain injuries in the face of disbelieving defendants, two of whom mounted unsuccessful fundamental dishonesty defences in the defence of the claims.

He was Counsel for the Claimant in the costs decision in *Thompson v. NSL Limited* [2021] EWHC 679 in which he persuaded the Court to allow a further £96,500 to several phases of a budget previously budgeted pursuant to CPR 3.15A.

He was Counsel for the Claimant in the case management decision in *Mustard v. Flower & Flower & Direct Line* [2021] EWHC 846 (QB) which discouraged pleas of fundamental dishonesty which are merely speculative or contingent.

He is noted too for taking a lead in the thorny issue of recording of medicolegal assessments and appeared in the lead cases of *Macdonald (By His Litigation Friend Lindsay Macdonald) v Burton* [2020] EWHC 906 (QB) and *Mustard v. Flower & Others* [2019] EWHC 2623 (QB).

Also, he is ranked as a Tier 1 Personal Injury Junior in the Legal 500 2022. Until 2018 he balanced his claimant practice with a committal practice for Insurance Companies. He now is instructed principally to represent Claimants and frequently is instructed to take on cases where allegations of dishonesty are contemplated or have been made by insurers against Claimants presenting with complaints that are not validated by neuroradiology.

In 2022, he has been invited to contribute a chapter on 'Medicolegal perspectives in TBI litigation' for The Oxford Textbook of Traumatic Brain Injury. In 2021, he published an article in PI Focus on fundamental dishonesty pleading in personal injury litigation

In the course of his 28 years at the Bar, he has led a series of initiatives to develop his areas of injury law, including:

In the late 1990's he was at the forefront of developing the technical Consumer Credit Act arguments underpinning the Insurance Industry's attack on credit hire agreements, culminating in the House of Lords decision in *Dimond v. Lovell* and appeared in the cases of *Burdis v. Livesey and Clark v. Ardington.*

He devised 'The Credit Hire Initiative' that established a framework for testing various legal arguments under the Consumer Credit Act 1974 on the validity of different forms of credit hire agreement before the senior Courts. Also, he negotiated on behalf of the entire motor insurance industry to settle large accruals of credit hire and credit repair debts between 1999 and 2001.

He provided leadership from the junior Bar to tackle motor insurance fraud in a forensic and coordinated manner, applying scientific evidence to tackle low velocity impact claims, refining the use of similar fact evidence to tackle organised motor fraud and dusting down the Old Order 52 of the RSC (now CPR 81) to commit dishonest injury litigants to prison.

He was involved in many of the leading committal cases between 2010 to 2018 including *Barnes v. Seabrooke, South Wales Fire & Rescue v. Smith, Liverpool Victoria v. Bashir & Nield v. Loveday.*

He brought the complex and controversial medical concept of 'mild traumatic brain injury' (or 'diffuse axonal injury') that can follow concussive and/or acceleration/deceleration injuries before the Courts in a series of 9 cases over 15 years from the 2007 decision in *Van Wees v. Kharkour*, to the 2022 decision in *Palmer v. Mantas & Liverpool Victoria Insurance Company.*

He was invited by FOIL in 2019 to participate in a round table conference on mTBI claims with insurers to prove a Claimant's perspective to a contentious area of medico-legal jurisprudence.

He tested the legitimacy of surveillance before the Courts, challenging the authenticity of the footage and the legitimacy of the techniques used to obtain it including the case of *Samson v. Ali*.

He has worked hard to raise awareness of the concept of post traumatic fibromyalgia and to clarify how the medicine and the law work in tandem to establish or refute clinical causation in such cases appearing in the case of *Maguire v. Carillion*. He has been involved in the evolving debate over the efficacy of the diagnosis of CRPS by reference to the Budapest criteria.

He has litigated cases where the use of covert and overt recordings of expert appointments have proved to be critical to the outcome of cases and was invited to speak on that issue at the Peterhouse Medico-Legal Conference 2019.

Many of his cases fight to trial. He is noted for his thoroughness and tenacity on medical issues and in his dealings with medical experts.

He takes on occasional Direct Access cases and Pro Bono cases including the case of *Khan v. Goddard* for which he was

nominated as Junior Pro Bono Barrister of the Year in the 2021 Bar Pro Bono Awards.

He was Counsel in the case of *Nield v. Loveda*y that won the award of 'Outstanding Case of the Year' at the Personal Injury Awards 2011. He was shortlisted as Barrister of the Year in the 2012 'Pro Claim' Personal Injury Awards.

He has presented six Seminars to his peers at the Personal Injury Bar Association including a lecture on brain injury at the 2010 Winter PIBA Conference, committal proceedings at the 2015 Spring PIBA Conference and on Section 69 of the Enterprise and Regulatory Reform Act 2013 at the Spring 2019 PIBA conference.

He presented a Webinar on mTBI litigation to APIL In November 2021. He has presented four 2 hour live Webinars on chronic pain, spinal injuries, subtle brain injury litigation and fraudulent claims for Thompson Reuters.

He was published in 2012 by the British Pain Society and spoke at the Society's annual 2012 conference in Liverpool and at the Cambridge Medico-Legal Society's 2012, 2015, 2016, 2018 and 2019 Conferences and at the Field Fisher 2016 Brain Injury Conference 'Hidden in Plain Sight' at City Hall. He spoke on Chronic Pain at the annual ABI Solutions Seminar in October 2018. He organised the 2015 TGC Fraud Conferences.

In September 2019, he presented a talk on covert recording of medico-legal appointments to the Peterhouse Medico-Legal Conference. In October 2019, he participated in a FOIL sponsored round table event with leading insurers and their panel solicitors to discuss: "Mild Traumatic Brain Injury Claims – Where are we now and where are we going?" He submitted an article providing a Barrister's Perspective to the IASP Classification of Chronic Pain for ICD-11 in Pain News in 2019. In May 2020 he delivered a Webinar entitled: '*Guidance on the recording of medicolegal appointments post Mustard and MacDonald*'.

He was a Member of the Ogden Working Party.

He is a member of Lincoln's Inn and teaches on the Inn's New Practitioners Advocacy Training Programme.

He takes on cases for Advocate, The Pro Bono Charity for the Bar. He has mentored 12 pupils through Temple Garden Chambers.

Away from the Bar his interests revolve around family, Andalucía, Headway, volunteering at the Glass Door Homeless Charity over the winter months, the Athenaeum, Rachmaninov, podcasts made by James O'Brien, Iain Dale and Dan Snow and Liverpool FC.

Favoured Charities: Advocate & Headway.

Directories

Chambers & Partners 2022 – Personal Injury: Rank: Star Individual

Marcus Grant is a pioneer in the areas of complex subtle brain injury and chronic pain syndrome. He has been at the cutting edge of fibromyalgia litigation for many years, and is a vigorous advocate for its recognition by courts and insurers. He is also instructed by insurers for committal proceedings for dishonest litigants.

Strengths: "A leader in his field, particularly in subtle brain injuries. He is very meticulous, razor-sharp and never misses a trick. His paperwork is very thorough and he captures the essence of the factual and legal dispute involved so well that it makes litigation look easy. He truly is in a league of his own when it comes to brain injury work." "A fountain of knowledge. He is robust and very effective."

Recent work: Secured a £12 million settlement for a 24-year-old claimant who sustained a severe brain injury in a road accident when aged nine.

Personal Injury

' One of the country's leading experts in subtle brain injury claims and chronic injury claims. '

Legal 500, 2022, Tier 1

Chambers & Partners 2021 – Personal Injury: Rank: Star Individual

Strengths: "He's the best person in the country for subtle brain injury cases and has an excellent command of medicine. His client skills are also very good." "He is a very good advocate – very polite and fights hard for his clients." "He is incredibly hard-working and pays great attention to detail." "Whether on his feet or on paper, Mr Grant is truly fourth-dimensional, with a second-to-none work ethic."

Chambers & Partners 2021 – Motor Insurance Fraud: Band 1

Strengths: "He continues to stand out as a trailblazer in the area." "A known name in the market with a good reputation."

Personal Injury

"'Has in-depth understanding of the medicine in the highly specialised fields of subtle brain injury and chronic pain conditions. Marcus has an excellent empathetic manner with clients sometimes lacking from the bar. He impresses with his experience of medico legal issues and legal knowledge whilst remaining highly effective on his feet.'"
Legal 500, 2021, Tier 1

Chambers & Partners 2020 – Personal Injury: Rank: Star Individual
A pioneer in the areas of complex subtle brain injury and chronic pain syndrome. He has been at the cutting edge of fibromyalgia litigation for many years, and is a vigorous advocate for its recognition by courts and insurers. He is also instructed by insurers for committal proceedings for dishonest litigants.
Strengths: "Marcus is a sought-after leading junior with a huge following. His specialism is brain injury, and his tenacity and knowledge of this area are second to none. He stands out for his leadership in exploring recent neurological developments in the courts and for his handling of medical experts." "He is an extraordinarily diligent performer who works ridiculously hard." "He has a first-rate mind and the stamina to match. He is a master at making the complicated very simple."
Recent work: Instructed in TXW v Joyce, a £4.6 million brain injury claim in which the central issue was whether or not W had suffered a dysexecutive syndrome depriving him of the ability to learn behavioural patterns to enable him to lead an independent life and return to work.

Chambers & Partners 2020 – Motor Insurance Fraud: Band 1
Leading junior for motor insurance fraud cases, particularly those that involve contempt of court. He is knowledgeable when it comes to fraud ring and fundamental dishonesty issues.
Strengths: "A very smooth operator and a good cross-examiner, who is always very well prepared." "A robust and polished advocate who is good on his feet." "Marcus is brilliant at sifting through large amounts of
evidence." Strengths: Acted in Liverpool Victoria v Yavuz et al, committal proceedings against nine individuals who brought injury claims arising from three alleged accidents.

Personal Injury
"A leading light in subtle brain injury work and chronic pain cases. "
Legal 500, 2020, Tier 1

Insurance Fraud
A leading light in subtle brain injury work and chronic pain cases. ’
Legal 500, 2020, Tier 1

Chambers & Partners 2019 – Personal Injury: Rank: Star Individual
A pioneer in the areas of complex subtle brain injury and chronic pain syndrome. He has been at the cutting edge of fibromyalgia litigation for many years, and is a vigorous advocate for its recognition by courts and insurers. He is also instructed by insurers for committal proceedings for dishonest litigants.
Strengths: “He’s great on the detail and his written work is fantastic.” “He’s the master of subtle brain injury litigation. He’s like a conductor with an orchestra in conference.” “He’s incredibly hard-working, thorough and does a very good job for his clients.”
Recent work: Instructed in Brown v Gray, a brain injury case in which a 54 year old builder recovered over £1 million after sustaining a closed head injury in a fall.

Chambers & Partners 2019 – Motor Insurance Fraud: Band 1
Leading junior for motor insurance fraud cases, particularly those that involve contempt of court. He is knowledgeable when it comes to fraud ring and fundamental dishonesty issues.
Strengths: “Thoroughly professional and an outstanding counsel.” “He is absolutely superb at committals.”
Recent work: Acted in Liverpool Victoria v Yavuz et al, committal proceedings against nine individuals who brought injury claims arising from three alleged accidents.

Personal Injury
‘He is a ferocious advocate and the go-to barrister for subtle brain injury and chronic pain cases as his understanding of complex medical issues is almost unparalleled.’
Legal 500, 2019, Tier 1

Insurance Fraud
‘He is a very courteous opponent who is regarded as an expert in fraud.’
Legal 500, 2019, Tier 1

C**hambers & Partners 2018 – Personal Injury: Rank: Star Individual**
A pioneer in the areas of complex subtle brain injury and chronic pain syndrome. He has been at the cutting edge of

fibromyalgia litigation for many years, and is a vigorous advocate for its recognition by courts and insurers. He is also instructed by insurers for committal proceedings for dishonest litigants.
Strengths: “Absolutely excellent. He has meticulous attention to detail and a real and profound knowledge.” “An outstanding advocate whose effortless mastery of the evidence and technical aspects of a case is truly a wonder to behold.”

Chambers & Partners 2018 – Motor Insurance Fraud: Band 1
Leading junior for motor insurance fraud cases, particularly those that involve contempt of court. He is knowledgeable when it comes to fraud ring and fundamental dishonesty issues.
Strengths: “He is intellectually sound, has a very easy way of explaining complex things, and is respected by judges.” “His ability, his preparation and his cross-examination skills are pretty much legendary.”

Personal Injury
“One of the finest junior counsel trial advocates at the English Bar.”
Legal 500, 2017

Insurance Fraud
“Exceptional – a true master of his craft.”
Legal 500, 2017

Chambers & Partners 2017 – Personal Injury: Rank: Star Individual
A pioneer in the areas of complex subtle brain injury and chronic pain syndrome. He has been at the cutting edge of fibromyalgia litigation for many years, and is a vigorous advocate for its recognition by courts and insurers. His tremendous medical knowledge
and unwavering commitment are singled out by solicitors, while he is also instructed by insurers for committal proceedings for dishonest litigants.
Strengths: “A brain the size of a planet, incredible on his feet and a lethal cross-examiner.” “At the forefront of the field. Not only does he have an absolutely first-class intellect, he is engaging and a real pleasure to work with. He is a master tactician and an outstanding advocate.” “Very approachable, clients are at ease with him.”

Chambers & Partners 2017 – Motor Insurance Fraud: Band 1
Leading junior for motor insurance fraud cases, particularly

those that involve contempt of court.
Strengths: “He is the genius for me. He is gifted, he truly takes care of his cases and he’s a master in his area of practice, especially when it comes to contempt of court.” “He has an incredible ability to see the wood for the trees, and he builds cases without making them into War and Peace, getting the critical points across calmly.”
Recent work: Successfully proved contempt of court in a case where four individuals were accused of staging a ‘crash for cash’ incident in April 2011.

Personal Injury
“Not only does he have an absolutely first-class intellect, he is engaging and a real pleasure to work with.”
Legal 500, 2016

“A leading personal injury junior with substantial expertise in chronic pain, brain injury and insurance fraud cases. He is noted by solicitors for his ready understanding of complex medical evidence. Strengths: “He is becoming one of the leading barristers in subtle brain injury case.” “He is able to present complex medical principles in a way that the court can easily grasp and understand.”

“He is able to understand the injuries and the medicine to ensure that such cases do result in the right level of damages.” Recent work: Counsel for the claimant in Siegel v Pummell, where a head injury after a car accident resulted in an award of £1.59 million.
Chambers UK 2016

“A barrister with no faults at all, and the hardest working member of the Bar”.
Legal 500, 2015

‘Has a broad personal injury practice that encompasses chronic pain, employer’s liability and insurance fraud cases. He has also been involved in some seminal TBI matters. Strengths: “Extremely able and passionate, he is very communicative and always responsive. His submissions are very impressive, as is his legal argument.”‘
Chambers UK 2015

“His cross-examination skills are a wonder to behold”.
Legal 500, 2104

Motor Fraud
‘Has been at the forefront of tackling fraud in the motor insurance industry and has involvement with a number of

reported cases concerning contempt of Court.
Strengths: “The go-to guy for the most complex of cases. He works very hard for his clients and will give no-nonsense advice.”
Chambers UK 2015

Further Directory quotes

‘Recognised as a standout junior for complex and catastrophic personal injury claims, he is lauded not only for his formidable expertise in the area but also for his ability to deal with clients. He also acts for defendants in claims with an element of fraud. Expertise: “It’s difficult to find the right superlative because they’ve all been used and none of them do him justice. He’s really in a class of his own – a formidable lawyer with a rapier-like mind but a very nice guy at the same time.” “His attention to detail, ability to take risks, and ability to get an angle on a case other barristers might not obtain are unparalleled.” Recent work: Acted in Clarke v Maltby, a claim concerning a subtle brain injury that involved complex expert evidence’.
Chambers UK 2014

‘courageous, determined, and excellent with clients’.
Legal 500 2013

‘Marcus Grant is a “fearless advocate for his client, who has the confidence to trust in his own judgment”. He attracts strong recommendations for his “excellence in subtle brain injury cases” and for going “beyond the call of duty” for vulnerable and anxious clients. His recent cases include Vaile v. London Borough of Havering, a case concerning an assault by an autistic pupil on his special needs teacher.’
Chambers UK 2013

‘The “utterly brilliant” Marcus Grant’.
Legal 500 2012

‘The “phenomenal and meticulous” Marcus Grant earns his stripes for “his excellent research, grasp of the numbers and articulate manner.” Allied to this he displays “confidence that permeates through the entire proceedings.” He has carved niches in relation to fraud, subtle brain injury and chronic pain cases.’
Chambers UK 2012

‘Leading juniors among the set include the “simply immense” Marcus Grant’
Legal 500 2011
‘He is praised for his thorough approach and “good manner

with clients". Also impressing in this regard is brain injury and chronic pain specialist Marcus Grant. A leading light in the personal injury world, he excels due to the "superb level of knowledge he brings to a case"'
Chambers UK 2011

'Marcus Grant takes apart a case from the roots where medical evidence is in issue'
Legal 500 2010

'The talented array of individuals on display includes Marcus Grant, a specialist in handling brain injury cases for both claimants and defendants with an emphasis on the representation of the former. Sources say that he is an out and out a highly formidable opponent to come up against.'
Chambers UK 2010

"... particularly skilled, is a superb advocate, and also good with clients" ...
Legal 500 2009

'Marcus Grant has gained a good name acting for insurers on complex fraud cases and representing claimants in subtle brain injury work'
Chambers UK 2009

'Marcus Grant is full of bright ideas ... very thorough, very skilled and gives reasoned and helpful advice'
Legal 500 2009

Education
Eton College
Reading University – BA in Economics and Accountancy
University of Westminster – CPE
Inns of Court School of Law
Lincoln's Inn Scholar – Sir Thomas Moore and Lord Denning Scholarships

Memberships
PIBA

Languages
English
Spanish

Cases

H v. T
(Unrep)

27.04.2022

Barristers involved: Marcus Grant
£1m settlement for a 30-year-old steel worker supervisor who developed chronic neuropathic pain in his right foot following a workplace accident.

Marcus Grant represented this claimant who sustained fractures to his right second metatarsal and cuboid bones following a crush injury in the workplace. The fractures were treated conservatively. He developed a burning pain across the dorsum and ball of the foot.

That pain became entrenched and chronic long after the fractures united. In the acute and subacute post-accident periods, he developed psychological symptoms satisfying the diagnostic threshold of an adjustment disorder, which remitted to sub-clinical levels by the second anniversary of the accident.

He was left with enduring pain of variable intensity that limited his ability to place weight through the ball of the foot for prolonged periods. On his case, the prognosis for further significant recovery past the fifth anniversary of the accident was poor. It left him unsuited to moderately heavy physically demanding manual work in which he thrived before the accident.

The bulk of his claim comprised his past and future reduced earning capacity. The defendant contended that he was less disabled in the labour market than he presented, relying on covert surveillance evidence in support of that contention; further, it suggested that his future prognosis was more optimistic than he claimed and disputed his 'but for' career potential by serving statements from colleagues making unkind observations about his competence in the workplace before the accident.

The claimant responded by adopting the covert surveillance, which he contended corroborated his case. He submitted rebuttal witness evidence to contradict the evidence from the defendant's witnesses that he was an unsatisfactory employee before the accident. The case settled for the above sum following a joint settlement meeting six months before trial.

R v. E

Unreported
23/03/2022

Barristers involved: Marcus Grant
£1m settlement for a 30-year-old kitchen manager who developed chronic pain following a road accident who was met with a fundamental dishonesty defence.

Marcus Grant represented this claimant who sustained an L3 burst fracture, PTSD, soft tissue injury to his right shoulder and right knee and a mild traumatic brain injury in a high energy road accident.

He presented with ongoing mechanical low back pain at the site of the L3 fracture, made worse with prolonged standing, loading of his spine and prolonged periods of time on his feet.

He had a low average premorbid IQ and was left with an array of subjective cognitive symptoms characterised by heightened distractibility, impaired concentration, impoverished working memory and heightened mental fatigue, exacerbated by any activity requiring prolonged periods of concentration.

Over the 5 ½ year period after the accident he managed to return to a reasonable level of physical function that included an ability to jog for short periods and return to noncontact football for up to 30 minutes a couple of times a week.

He continued to require a lot of support from within the family and struggled with independent living.

He provided 3–4 hours per day, three days a week of assistance to his brother's sandwich delivery business, delivering sandwiches, as part of his vocational rehabilitation.

He presented a claim on the basis that he needed further support from outside the family to recover greater independence and that

he would be left with a reduced earning capacity for the rest of his life.

The defendant contended that he had made a good recovery from his injuries and that he was fit enough to return to full-time work in the hospitality sector, provided that he avoided heavy lifting.

It denied that he had sustained any significant traumatic brain injury and contended that any enduring subjective symptoms of chronic pain were maintained by litigation and would not persist in to the long-term future. It contended that he had been over-provided with rehabilitation, which had fostered a misplaced sense of dependency.

After the fifth anniversary of the accident, the defendant served surveillance evidence backed up with allegations of fundamental dishonesty, asserting conscious dishonest under-reporting of function to the medical experts.

That allegation was met with a reply denying fundamental dishonesty, asserting that it should never have been pleaded and seeking indemnity costs at trial.

The case is settled at a JSM seven weeks before trial.

M v. S & A 21.03.22

(Unrep)
21.03.22

Barristers involved: Marcus Grant
£4.4m settlement for a businessman who developed functional neurological disorder and chronic pain following a running down accident.

Marcus represented a 38-year-old businessman run over at low speed by a reversing articulated lorry in what was an objectively horrifying accident.

He sustained a mild brachial plexus injury to his dominant arm, audiovestibular injury to his left saccule and utricle triggering a migraine variant balance disorder and phonophobia, PTSD, a major depressive episode of moderate to severe intensity, chronic widespread primary pain and a probable mild / possible symptomatic brain injury overtaken by a functional neurological disorder ["FND"].

The symptoms proved resistant to treatment, including 22 weeks as an inpatient at a facility specialising in psychiatric injury. At the 6th anniversary he presented with debilitating symptoms and was in receipt of a state funded 24/7 care regime.

He failed all PVTs and SVTs administered to him by the parties' neuropsychological experts (one test out of seven was below chance level) and was taking a combination of powerful anti-psychotics and neuropathic pain agents with opiate properties.

C contended that PVT / SVT failure was expected as part of the FND presentation.

Whilst the defendant harboured some concerns about his credibility, the principal issues between the parties at the 6th anniversary of the accident concerned the adequacy of historic treatment / rehabilitation and his prognosis.

D adopted a position that historic treatment lacked coordination, had been too focussed on brain injury and fostered a misplaced sense of dependency by C on others.

C rejected these propositions and observed that D had failed to disclose any lay witness or surveillance evidence to contradict the factual precision of C's stated case.

The case settled through negotiation at a level where both parties respected the merits of the other's case.

D v. R

15/02/2022

Barristers involved: Marcus Grant
£3.9m settlement for a university student who sustained a brain injury in a road accident

Marcus represented a then 19-year-old undergraduate who sustained a severe traumatic brain injury in a road accident. He was left with mild dysexecutive symptoms, some cognitive weakness and significantly reduced mental stamina. He received excellent rehabilitation including a trial of independent living that was frustrated by the lockdowns.

He was left with a modest theoretical residual earning capacity premised on the need to secure part time non-stressful work with a diversity-aware employer prepared to make adjustments to accommodate his enduring difficulties.

He required a light touch case management and support worker regime to provide him with additional prompting and safeguarding in times of stress and to ensure that he maintained sustainable goals and structured activities to provide for a reasonable quality of life. He was destined to have to accommodate loneliness associated with being less able to sustain lasting supportive relationships.

The settlement reflected his aspirations to follow a career that would have paid above average postgraduate earnings, had he succeeded. That career model was discounted to reflect the loss of chance.

The case settled through a structured negotiation with each side respectful of the other's position.

A v. D

03/02/2022

Barristers involved: Marcus Grant
£1.355m settlement for a warehouse worker who sustained a brain injury in a road accident.

Marcus represented a then 22-year-old warehouse worker who sustained a severe traumatic brain injury in a road accident. He was left with mild dysexecutive symptoms, some cognitive weakness and reduced mental stamina. He received excellent rehabilitation including a trial of independent living.

He recovered the ability to live on his own and to sustain a supportive and loving relationship. He aspired to return to remunerative self-employment. He recovered most of his pre-accident physical strength, but was unable to contemplate the cognitive demands of his chosen career pre-accident as a heating engineer.

The settlement factored in a modest residual earning capacity and the need for some ongoing light touch case management. However, in large part because of the excellent rehabilitation he received under the auspices of the Serious Injuries Rehabilitation Code, he made an objectively good outcome from a serious TBI.

His rehabilitation suffered a setback when the defendant suspended funding for the rehabilitation at the second anniversary of the accident. That necessitated early issue of proceedings to secure an interim payment to restore the rehabilitation package.

By the fifth anniversary of the accident he had achieved a good outcome on which basis of claim settled through negotiation.

B v. B 21.01.2022

(Unrep)
21.01.2022

Barristers involved: Marcus Grant

£2.519m settlement for a 61-year-old bricklayer who developed lower limb, colorectal, neurological, and psychiatric injuries in a road accident.

He sustained bilateral comminuted tibia and fibular fractures, pelvic fractures, abdominal injury causing trauma to his bowel, kidney, and an aortic avulsion injury. He suffered hypovolaemic shock resulting in hypoxia to the brain and mild ischaemic brain damage. He suffered a major depressive disorder in response to the enforced lifestyle changes brought about by his catastrophic injuries.

He was unable to return home for 19 months after the accident and was cared for in hospital and then a specialist rehabilitation centre over that period before his wife then took over his care regime. He underwent physically and emotionally excruciating rehabilitation. He was left with compromised mobility, dependent on crutches over the short distances and a wheelchair over longer distances and modified car could accommodate a motorised wheelchair and be operated with hand controls only.

Arguments between the parties' respective valuations of the claim centred over whether he required wheelchair compatible accommodation as opposed to single level accommodation, whether that accommodation should be sourced by reference to prices in East Anglia where he was living temporarily at the time of the accident and had all his post-accident rehabilitation or Scotland where he lived before the accident. Subsidiary issues arose regarding the valuation of his care needs and the extent to which they would increase with age and the effect of his enforced immobility and moderately severe depression on his life expectancy.

Arguments arose as to the extent to which it was appropriate to expect his wife to continue providing the any of his care Post settlement in the face of her deteriorating health and stresses within their marriage, and the extent to which he would need and tolerate input from support workers and/or case managers going forwards. The claimant was a proud and independent man before the accident and those characteristics remained with him through to the date of settlement.

The parties negotiated against that evidential stand-off. The case settled 10 months before trial through negotiation, with both parties moving away from their best-case positions.

Palmer v. Mantas & Liverpool Victoria Insurance Company (20.01.2022)

[2022] EWHC 90 (QB)
20.01.2022

Barristers involved: Marcus Grant
QBD judgment for £1.67 million in favour of a mild traumatic brain injury Claimant faced with a fundamental dishonesty defence following a rear-end shunting road accident.

QBD judgment for £1.67 million in favour of a mild traumatic brain injury Claimant faced with a fundamental dishonesty defence following a rear-end shunting road accident

Marcus Grant, instructed by Patricia Ling and Lucy Walpole of Garden House Solicitors, represented a 34-year-old Claimant ["C"], Natasha Palmer who suffered an enduring cluster of physical, cognitive, behavioural and psychological symptoms following a rear-end shunting accident on the M25. She brought a seven-figure compensation claim.

She was met with a defence alleging that she was fundamentally dishonest because she had dishonestly exaggerated her post-accident difficulties and had dishonestly under-reported her pre-accident vulnerability. The Second Defendant's ["D"] valuation of the claim was £5,407.

On her case, she sustained a whiplash injury, mild traumatic brain injury ["mTBI"] with associated post-traumatic migraine, subtle audiovestibular ["AV"] injury and secondary psychological sequelae sufficient to derail a promising career in marketing.

D accepted only that she had sustained a short-lived whiplash injury and that some psychiatric injury had resulted that aggravated a pre-accident relevant psychological history but denied that she had sustained any organic brain injury and denied that any of her enduring difficulties were attributable to the accident.

C's focus after the accident was on her physical injuries, principally a whiplash injury to her neck and low back and also soft tissue injuries to her left knee. She was also troubled by headaches that she understood to be a consequence of a 'concussion', diagnosed

in hospital on the day after the accident, which she was reassured would settle over time.

She returned to work within 10 days of the accident and struggled. She resigned from her job 5 months later and then, 3 months later, took on a part time role as a self-employed consultant in marketing for 9 months before starting a third job, in which she also struggled, and was permitted to work from home for some of the time.

c. 2½ years after the accident her physical and psychological health deteriorated and she sought more medical help, in part through the medico-legal experts instructed by her legal team. A traumatic brain injury was confirmed for the first time by a medico-legal expert on the eve of the third anniversary of the accident; subsequently, she was confirmed to be presenting also with audiovestibular pathology, PTSD, major depression and chronic post-traumatic migraine.

She continued to report significant pain from her injury sites which had become chronic. Pain experts were instructed. She was found to have been asymptomatically hypermobile before the accident, a poor prognostic indicator to recovery from soft tissue injury.

The Claimant's medico-legal team presented a picture of mTBI with overlap injuries from the chronic pain, specifically the post-traumatic migraine, AV pathology and significant enduring neuropsychiatric symptoms, all of which persisted with variable levels of severity at the 7½ year anniversary at the time of the adjourned trial in November 2021.

The Defendant elected not to engage in the Rehabilitation Code. It sought instead to focus its defence on C's pre-accident history of intermittent depressive episodes. 5½ years post-accident, it deployed c. 700 pages of C's social media posts to advance a positive case of fundamental dishonesty, set out in a pleading 18 days before the original trial in the action in March 2020 (adjourned because of the first pandemic lockdown), , contending that C's self-report of her variable levels of function to the medico-legal experts belied the impression she chose to portray to the outside world on her open Instagram and Facebook accounts.

Upon service of the fundamental dishonesty pleading, C asked D for its covert surveillance that it had elected not to deploy or rely on. 17 days of covert surveillance were disclosed, which largely corroborated C's subjective account of her activity levels to the experts and was not referred to by D in its closing submissions.

At trial, C's experts laid before the Court their coherent methodologies in reaching their clinical formulations of C's presentation. On the issue of mTBI, C's neurological expert, supported by her neuropsychiatric and neuropsychological experts, explained that the acceleration-deceleration-rotation mechanism of trauma to the brain would have impacted specifically on the midline structures of C's mid brain, specifically the fornix and the corpus callosum, which he identified as a 'cone of vulnerability' to such a trauma.

The Court accepted that such an injury explained the delayed pattern of denser PTA commencing c. 30 minutes after the accident, consistent with a diagnosis of mTBI.

The Court placed particular reliance on the academic paper "Concussion is confusing us all" by Prof. Sharp, which explained the importance of a systematic approach to brain injury assessment, discouraged clinicians from trivialising head injury severity by a diagnosis of 'concussion', and confirming that a significant minority of mTBI patients had a poor outcome; that minority generally presented with overlap injuries, as in C's case.

Also, the Court accepted that chronic pain was an accepted consequence and complication of mTBI.

The Court preferred C's experts to D's experts across all disciplines that gave oral evidence. The Court observed: "Many of the issues concerning the Claimant's symptoms and the complicated inter-play between the physical, neurological and psychological consequences of the accident required sophisticated and at times cutting-edge expert evidence."

The Court was critical of two of D's experts. It observed that D's neuropsychological expert's first report was "littered with judgmental and rather scathing comments and that her language went beyond that which was appropriate for an expert to employ and suggested a level of unconscious bias".

The Court was unable to attach any weight to D's pain expert who had departed from his CPR 35 duties to the Court in a number of respects. The Court cited the Court of Appeal decision in Liverpool Victoria v. Zafar [2019] EWCA Civ 392 in stating that the importance of the Practice Direction to CPR 35 and the importance of not departing from CPR 35 duties, either intentionally or recklessly, "cannot be over-emphasised".
The Court rejected D's submissions that quantification of the loss of earnings claim should be by reference to a lump sum Smith v.

Manchester / Blamire approach, distinguishing the cases of Billett v Ministry of Defence [2015] EWCA Civ 772 and Murphy v Ministry of Defence [2016] EWHC 03 (QB) on the facts, preferring instead a multiplier-multiplicand approach, following the dicta in Inglis v Ministry of Defence [2019] EWHC 1153.

The Claimant recovered c. £1,679,406 in damages and an additional c. £75,000 pursuant to CPR 36.17(4)(d) and some of her costs to be assessed on an indemnity basis with penalty interest.

A copy of the judgment can be found here.

W v. B (11.01.2022)

(Unrep)
11.01.22

Barristers involved: Marcus Grant
£1.097m settlement for a 47-year-old Teaching Assistant who developed chronic pain following a slipping accident.

Marcus represented the claimant who sustained soft tissue injury to her right sacroiliac joint in a workplace slipping accident. The soft tissue injury did not progress towards full resolution. Instead, she developed referred neuropathic pain down the right leg which had some intermittent features of CRPS.

Within a few days of the accident, the pain spread to her right upper limb; thereafter she presented with profound neuropathic pain in her right upper and lower limbs. In the early period, some of the treating clinicians diagnosed Type I CRPS without nerve injury. However, over time the visible symptoms of CRPS remitted such that the Budapest criteria were not satisfied. The pain persisted. She suffered a loss of function in the workplace and in her home lives; an adjustment disorder with a prolonged depressive reaction followed. She became profoundly disabled by her pain.

She presented with some prior psychological vulnerability. Roughly 20 years before the accident, she developed some right sided sciatica and coccygeal pain following childbirth which caused her some difficulties for a short period. Femoral neuralgia was diagnosed at the time, and she was noted to have depression.

There were intermittent references to medically unexplained pains, including abdominal and pelvic pains; on one occasion she presented with pain in her right hand with a subjective colour change to the skin. Her work record was good. She was a mother to 4 children and had worked full time throughout most of the previous 20 years.

Her case was that she sustained a traumatically induced primary chronic pain condition, characterised by neuropathic pain in the right upper and lower limbs that, at times, satisfied the CRPS diagnostic criteria. To the extent that her condition could not be explained in purely organic terms, it was explicable by reference to a diagnosis of somatic symptom disorder with predominant pain.

The litigation was put back to see whether her symptoms would remit with bespoke one-on-one treatment with a chronic pain physiotherapist and a chronic pain psychotherapist. By the eve of the sixth anniversary of the accident, the prognosis was guarded.

On her case, she would never work again and required daily input from a support worker and single level accommodation.

The defendant’s response was to suggest that the onset of the chronic symptoms following the six-month anniversary of the accident was a coincidental manifestation of a pre-existing psychological vulnerability, probably a pre-existing somatoform pain disorder. The causal nexus between the slipping accident and the emergence of the chronic symptoms was doubtful. In the alternative her symptoms were maintained by the stress for litigation and would remit swiftly following the conclusion of the litigation.

The parties negotiated against that evidential stand-off. The case settled eight weeks before trial through negotiation, with both parties moving away from their best-case positions.

G v. C (10.01.22)

(Unrep)
10.01.22

Barristers involved: Marcus Grant
£920,000 settlement for a 36-year-old police officer who developed chronic pain following a road accident.

Marcus represented the claimant who sustained soft tissue injuries including a left labral tear in a high-energy deceleration car crash.

She required surgery to the labral tear which left her with residual pain. In addition, she suffered post-traumatic stress disorder, depression and some vestibular damage to her right utricular macular that left her with intermittent episodes of migraine-variant balance disorder and visually induced dizziness. She was also left with pain in her neck, low back and left shoulder.

She attempted to return to light adjusted duties with the police but was unable to cope because of pain, and neuro cognitive symptoms. She was retired from the police on the grounds of ill health after the third anniversary of the accident. She was left with restricted mobility, mobilising with a single crutch outdoors. Surveillance evidence was disclosed which usefully illustrated her residual restricted levels of function.

On her case, she had some prior vulnerability to a poor outcome following significant trauma though, on the balance of probability, this would not have manifested in the absence of such trauma. Her prognosis past of the sixth anniversary of the accident was guarded; namely, there was a 40% chance of significant improvement including complete resolution of symptoms and a 60% chance of minimal improvement including the possibility of deterioration post-settlement of her claim.

The defendant considered that she was extremely vulnerable to developing a somatic symptom disorder with predominant pain in the absence of trauma and speculated that some of her pre-accident abdominal pain was psychosomatic.

On C's case this pre-accident history of abdominal pain and pain on intercourse was attributable to microscopic endometriosis and responded well to the implementation of a Mirena coil before the accident.

On the defendant's case her career in the police was likely to have been short lived by reason of her vulnerability, irrespective of the accident. She had become extremely distressed by the litigation process and would like to make a swift and full recovery post settlement.

The parties negotiated against that evidential dichotomy. The case settled 10 weeks before trial through negotiation, with both parties moving away from their best-case positions.

G v. M & M 14.12.2021 (Unrep)

(Unrep)
14.12.2021

Barristers involved: Marcus Grant
£1.66m gross settlement for a 30-year-old welder who sustained trans-humeral amputation following a motorcycle accident .

Marcus Grant represented a then 23-year-old welder who recovered £1.66m gross of 55% contributory negligence in respect of injuries sustained in a motorcycle accident.

Within weeks of the accident, he returned to his welding work with a dominant flail arm. 13 months after the accident he elected to have the flail arm removed via a trans-humeral amputation and he returned to work once more as a one-armed welder. Showing astonishing courage and receiving assistance from his employer who made a series of adjustments to accommodate him as a one-armed welder, he continued to work in that trade over the ensuing 6 years whilst the liability dispute following the accident continued.

The physical ordeal of that struggle to work imposed significant strain on his contralateral upper limb and on his spine.
6 years before the motorcycle accident he sustained bilateral femur fractures and significant fracture injury to his non-dominant

wrist which left him with residual symptoms at the time of the motorcycle accident. These pre-existing conditions complicated the analysis of the 'but for case'.

Following resolution of liability and receipt of an interim payment, at the 6th anniversary of the accident, he stepped away from welding and started less well remunerated light sedentary work.

The trans-humeral amputation was too high to accommodate any bionic prostheses.

He enjoyed the support of a loving wife and close family who had provided all the care and support over the preceding 6 years to facilitate his full-time work.

His settlement factored in allowances for risks that his levels of function may deteriorate in older age.

His settlement also reflected his astonishing stoicism in coping with catastrophic injury.

The case settled via a structured negotiation.

G v. I 07.12.21

(Unrep)
07.12.21

Barristers involved: Marcus Grant
£607,000 settlement for a 48-year-old Police Officer who sustained mTBI in a RTA.

A then 45-year-old Traffic Officer was involved in a road accident when a criminal deliberately reversed a car into his police vehicle, causing it to rotate violently. He struck the side of his head on the vehicle's A-frame and was dazed. He was able then to give chase on foot for roughly 15 minutes before becoming unwell with nausea, headache and dizziness.

Thereafter he developed a constellation of symptoms commonly seen after a concussive head injury to include migraine headache, dizziness, nausea, blurred vision, sensitivity to light and sound, impaired memory, difficulty sleeping, impaired concentration, reduced ability to multitask and mental fatigue.

He was diagnosed in A&E with a concussion and discharged home with reassurance that he would make a swift recovery. His recovery did not materialise and he became increasingly anxious as he became unable to work. He received neuro rehabilitation which focused on cognitive behavioural techniques and audio vestibular physiotherapy, none of which broke the deadlock of his symptoms.

He was forced to leave the Police Service after 20 years' service on the ground of medical incapability, following which is mood levels dipped further. By the fourth anniversary of the accident he had become a shell of the man he was before the accident. He presented with profound mental fatigue, intrusive migraine headaches, impaired balance and loss of self-confidence. He had become dependent on his wife to prompt him.

He received a rehabilitation package that focused on getting him to engage in activities away from the home. The Covid lockdowns interfered with this rehabilitation.

His case was presented on the basis that he had sustained a mild traumatic brain injury with overlapping neuropsychiatric and audio vestibular injuries and had fallen into the small but significant cohort of mTBI patients who have lasting debilitating symptoms following mild traumatic brain injury.

It was contended on his behalf that he would be unlikely to recover any remunerative and capacity and that he needed a structured rehabilitation package that could be tapered down to a minimal maintenance level over the course of 24 months post settlement.

The defendant instructed a team of experts that was prepared to accept that he had sustained a technical mild traumatic brain injury per the Mayo classification criteria, but which contended that the organic contribution from the brain injury dissipated within

a matter of months of the injury. It contended that his chronic presentation was explicable by a misinformed belief as to the seriousness of the brain injury and psychological factors that would resolve once the litigation was settled.

Various quantum arguments were raised about his 'but for' career model and residual earning capacity. The need for any substantive structured ongoing rehabilitation was denied.

The above settlement sum represented a compromise between the Parties' respective positions.

Stansfield v. BBC 01.10.2021

[2021] EWHC 2638 (QB)
01.10.2021

Barristers involved: Marcus Grant
QBD judgment for £2.42 million, reduced by 33% to £1.6 million for contributory negligence, made by Mrs Justice Yip to BBC TV Presenter, Jem Stansfield in respect of his mTBI / audiovestibular workplace injury claim.

Marcus Grant, instructed by David Marshall of Anthony Gold Solicitors, represented a 50 year old Claimant ["C"] suffered a mild traumatic brain and ancillary subtle injuries in a crash test experiment in the course of his employment for the BBC. The experiment involved C acting as a crash test dummy for the BBC in two forward facing and two rear-ward facing simulated crashes into a metal post at impact speeds of between 8 and 11 mph (which can be viewed on YouTube).

On his case, C sustained a whiplash injury, mild traumatic brain injury ["mTBI"], subtle audiovestibular ["AV"] injury, and secondary psychological sequelae sufficient to derail a promising television career.

The BBC accepted that C suffered a moderate whiplash injury with depressive symptoms but denied that he sustained any brain or AV injuries and put him to proof of his claim, citing the dicta in Pickford v. ICI [1998] 1 WLR 1189 that required a Claimant to prove the medicine underpinning his claim in circumstances where '*the case involves the assessment of complex and disputed medical evidence*'.

The case was heard over the course of 10 days. The Court found that the interplay between different medical disciplines was complex and that C had suffered injury to his neck, brain and AV system and secondary psychiatric injury in the crash tests. Individually none of these injuries was particularly serious, but their cumulative effect could be. Research and clinical practice demonstrated that each of these injuries can be associated with unexpectedly poor outcomes and that C fell into this patient cohort.

Notwithstanding the absence of any neuroradiological findings of brain injury or clear evidence of post-traumatic amnesia, the Court found that C had nevertheless sustained a mTBI.

The Court considered expert engineering evidence that confirmed that each of the crash tests had exposed C's brain to potentially damaging forces, that repeated impacts over a short period increased the risk of TBI, that there was evidence of cognitive impairment after the crash tests, notwithstanding that he was able to continue performing in front of the camera, there was evidence of short lived anosmia and that he developed more obvious signs of agitation and confusion and uncharacteristic behaviour roughly 6 hours later. Also, there was evidence of strikingly impaired processing speed performance on valid neuropsychological testing.

It was common ground between the neurological experts that some mTBI patients experience ongoing symptoms of brain injury and are subject of great interest in focus.

The Court found that C sustained subtle damage to his left utricle and semi-circular canal (of the inner ear) as a result of the crash tests which was the cause of his early complaints of dizziness and balance problems and of his migraine. This damage was observed following meticulous and reliable neurotological assessment. It found that the tinnitus that presented several weeks after the crash tests was attributable to them. The objectively modest AV damage could not explain the ongoing significant impairment on its own, but was another important piece of the jigsaw to C's complex presentation.

The Court accepted that C developed a significant psychological reaction that was superimposed on his organic injuries that

included a major depressive episode and post-traumatic symptoms;, over time, his presentation satisfied a dual diagnosis of Somatic Symptom Disorder lying alongside the enduring whiplash, mTBI and AV injuries.

Four weeks before trial, the Defendant elected not to rely on its neuropsychological or psychiatric evidence. The Court rejected the Defendant's neurological and AV experts' evidence that excluded any mTBI or AV injury attributable to the crash tests.

The Court assessed C's damages at £2.42 million, the bulk of which represented lost earning capacity on a loss of chance analysis. One third of the award was deducted to reflect an agreed 2/3:1/3 liability apportionment agreed between the parties.

The Court expressed its astonishment that anyone though that using a human crash test dummy to simulate a crash test at between 8 and 11 mph could be thought to be a sensible idea.

A copy of the judgment can be found here.

E v. B & L

(Unrep)
30.09.21

Barristers involved: Marcus Grant
£1.5m settlement for a 52-year-old decorator who developed Functional Neurological Disorder.

A then 46-year-old decorator was involved in a low-speed side-impact road accident causing him a whiplash injury. His head struck the side of the driver's door causing him a concussion.

He developed an array of post-concussive symptoms, including profound audiovestibular pathology which, within six weeks, progressed to non-epileptic seizures.

Within four months of the accident he presented with debilitating post-traumatic stress symptoms and became significantly disabled by acute neurological, audio-vestibular, neuro-cognitive and neuropsychiatric symptoms.

The headline diagnosis to explain his presentation was Chronic Mixed Functional Neurological Disorder with non-epileptic attacks and Complex Post-Traumatic Stress Disorder.

He has been the subject of objectively significant physical and emotional abuse in his childhood, though had led a productive and active adult life, raising a family and holding down employment over the intervening c. 30 years up to the time of the accident.

No issue was taken as to the genuineness or severity of his presentation. The dispute between the parties coalesced around the issue of his vulnerability.

The Claimant presented his case by applying a modest percentage discount (a 'Malvicini discount') to the overall value of his claim to reflect a chance that, but for the accident, without any intervening compensable triggering event he may have descended into an equivalent FND that unlocked the repressed traumatic memories from his childhood.

The Defendants adopted an acceleration model, applying a diathesis stress framework for understanding the aetiology of FND, contending that the next significant adverse life event, identified on the facts as a an unrelated medical condition of divarication of the rectus muscles four years post-accident and/or the discovery of a non-functioning pituitary macroadenoma at the sixth anniversary of the accident, would on a balance of probabilities have severed the chain of causation between eth accident and his ongoing FND condition, terminating the claim at that point.

There were different approaches taken to the quantification of the care claim that focused particularly on whether or not the Claimant and his family would accept an expensive external care regime, having chosen to provide the care themselves through to the date of settlement.

The Defendants maintained a sympathetic and supportive approach to the claim, engaging proactively in rehabilitation throughout

the six year period between the accident and settlement.

The claim is settled through negotiation with each party respecting the other's alternative view on analysing the causation issues in the case.

K v. C 16.07.21

(Unrep)
16.07.21

Barristers involved: Marcus Grant
An 18-year-old student recovered £725,000 in respect of whiplash and psychological injuries in a rear-end shunting accident at 10 mph.

She had been exposed to abuse in her childhood and was more vulnerable to the consequences of trauma than an average person. Unbeknownst to her she was also hypermobile.

Immediately following the accident she suffered a panic attack and was unable to exit her car; the emergency services cut the roof off the vehicle to extricate her. She developed acute PTSD, which within three months of the accident triggered the first episode of transient losses of consciousness [TLOC]. Postural Tachycardia Syndrome [POTS] was diagnosed 4 years after the accident to explain the mechanism for these early TLOCs; thereafter her autonomically mediated syncope episodes evolved into frequent non-epileptic seizures. She continued to suffer acute upper neck and thoracic pain from the whiplash injury.

Vertical MRI scanning revealed damage to the alar ligament at the base of the skull, attributable on her case to a combination of the constitutional asymptomatic hypermobility and the traumatic forces of the accident.

The case settled 6½ years post-accident, after K had undergone an array of treatments, causing little lasting benefit in her pain and non-epileptic attacks that proved debilitating. In that time she managed to complete an undergraduate degree in architecture but had not managed to secure remunerative employment.

The Defendant's approach to the claim over the first 4 years was largely disbelieving of her symptoms, but subsequently more focussed on her pre-morbid psychological and hypermobile vulnerabilities and optimism for a better recovery following the conclusion of the litigation.

The case settled following ADR with both parties moving away from their best case positions.

T v. N 16.07.21

(Unrep)
16.07.21

Barristers involved: Marcus Grant
A 36-year-old prison officer recovered £430,000 in respect of a mild traumatic brain injury ["MTBI"] and associated audiovestibular ["AV"] and psychological injuries after being knocked off her motorcycle at low speed.

Following the accident she developed a cluster of physical and cognitive symptoms that became more debilitating over the 30 days after the accident as she attempted to push herself to return to work. These attempts provoked intermittent vestibular migraines and migraine related balance disorder which underpinned the subsequent deterioration in her symptoms (on her case).

Her symptoms were debilitating; she was forced to leave the prison service and became acutely distressed by excessive visual or audible stimuli and unable to work.

On her case, the blow to her helmet hitting the road surface and/or the acceleration-deceleration-rotational forces initiated by the collision were sufficient to cause a probable MTBI; careful testing of her AV system revealed bilateral hypofunction of the saccular maculae. She suffered an acute neuropsychiatric response to the symptoms and their enforced lifestyle changes.
The claim was advanced on the basis of these separate subtle neurological, AV and psychiatric strands overlaying, maintaining and

exacerbating each other.

The claim was defended vigorously on the basis that she has sustained nothing more than a short lived soft tissue injury; it was asserted that she had not sustained any MTBI or AV injuries and any psychological symptoms were attributable to a pre-morbid vulnerability.

Further or in the alternative, at the 6th anniversary of the accident, N advanced an alternative case suggesting that any symptoms she could persuade a Court were genuine were instead attributable to a control and restraint incident in the course of her work 30 hours earlier in which a prisoner's foot came into contact with her face.

No allegations of dishonesty were pleaded and no surveillance disclosed to contradict her self-report of her restricted lifestyle.

Significant costs were expended by both parties in advancing their respective cases which eventually ended with the above settlement through ADR a few months before trial.

H v. Z 12.07.21

(Unrep)
12.07.21

Barristers involved: Marcus Grant
A 46-year-old flight instructor recovered £600,000 in respect of injuries sustained after a motorcyclist struck the rear of her car at speed.

Following the accident she developed a cluster of physical, cognitive and psychological symptoms that became more debilitating over time.

Neurological examination confirmed that, at most, her presentation satisfied the threshold for a 'possible symptomatic TBI' and that her presentation was predominantly psychologically mediated.

Her principal enduring complaints were pain, PTSD phenomena, vestibular symptoms and fatigue.

The nociceptive cause of any soft tissue pain was time limited and the persistence of subjective reports of pain thereafter were centrally sensitised and psychologically mediated. She presented with symptoms commonly seen following TBI in the absence of TBI and the working diagnosis was Somatic Symptom Disorder [SSD] and Functional Neurological Disorder [FND].

She continued to present as a disabled woman past the 5th anniversary of the accident.

Z viewed the claim with a measure of scepticism with its lead expert suggesting a degree of voluntary contribution to the functional presentation.

Furthermore, Z point to the fact of a wholly unrelated medical condition (Morton's neuromas) that appeared at the second anniversary of the accident and rendered her immobile for a period, dependent on a motorised scooter, as breaking the chain of causation and likely capable of tipping her into an equivalent pathway of SSD and FND in the absence of the accident.

The case settled through ADR with both parties moving away from their best positions.

M v. H 15.06.21

(Unrep)
15.06.21

Barristers involved: Marcus Grant
A 47-year-old pharmacist recovered £465,000 in respect of post traumatic fibromyalgia sustained in a rear-end shunting road accident.

B sustained soft tissue injuries and psychological symptoms in the accident. The latter deteriorated rapidly, such that within 3 weeks of the accident she was exhibiting suicidal ideation.

A combination of pain from her whiplash injuries and depressed mood and heightened anxiety deprived her of restorative sleep from the time of the accident.

What started out initially as pain predominantly in her neck and right shoulder spread to become widespread, affecting multiple joints and accompanied by pervasive fatigue, headaches and cognitive slowing.

She was diagnosed with post traumatic fibromyalgia, major depression (F43.2) and a severe adjustment disorder (F43.22).

Her rheumatologist explained that the likely mechanism for the pain from the whiplash injury becoming widespread and centrally sensitised was a combination of psychological factors and the inability to achieve restorative sleep.

She underwent appropriate treatment modalities in the form of anti-depressant and neuropathic pain medication, psychotherapy and access to a residential pain management programme, none of which broke the deadlock in her symptoms.

The symptoms brought about a breakdown in her relationship with her partner; she was unable to return to her career.

The case was defended initially on the basis of a low velocity impact incapable of causing significant injury.

Expert biomechanical evidence confirmed that the speed change in B' car from the rear-end shunt in the first 1/10th of a second after impact was between 6.6 and 9.3 mph, well above the threshold capable of causing whiplash injury.

The defence sought to attribute the presentation of B's downturn in health to pre-existing vulnerability, a coincidental descent into fibromyalgia that was unrelated to any traumatic trigger and unrelated stressors in her life, focussing in particular on strains in her relationship with her partner.

The case settled through negotiation at the 5th anniversary of the accident.

Long v. Elegant Resorts Limited 18.05.21

[2021] EWHC 1330 (QB)
18.05.21

Barristers involved: Marcus Grant
mTBI Claimant recovered £509,000 and defends a fundamental dishonesty strike out defence in the High Court.

Marcus Grant, instructed by Colin Cook of Hatch Brenner Solicitors, represented a 47 year old Claimant ["C"] who struck his head walking beneath a low door lintel in the course of his employment.

On his case, he developed a mild traumatic brain injury ["mTBI"] characterised by a period of post traumatic amnesia ["PTA"] of at least a few minutes by reference to the Mayo classification of brain injury, together with post traumatic migraine, responsible for causing periodic flare-ups in his cluster of physical, cognitive, behavioural and psychological symptoms on physical and mental exertion.

On his case, the symptoms persisted, and within two months provided the kindling for the onset of a Severe Depressive Episode which then became his primary clinical condition and persisted at a severe level for at least two years before remitting partially; he was left with a residuum of his mTBI symptoms, which by that stage were better explained by reference to a Functional Neurological Disorder and a co-existing Somatic Symptom Disorder ["SSD"].

By the date of trial he had recovered a part time earning capacity in a less well remunerated and pressurised job. He conceded a reduction in the top line of his loss of earnings claim to acknowledge a prior vulnerability to chronic pain, having suffered fibromyalgia for several years roughly 8-9 years before the accident, that had left him with low grade chronic pain through to the time of the accident for which he continued to treat with medication and graded exercise.

The Defendant [“D”] denied that there was any brain injury, explaining that his presentation reflected a pre-existing SSD unrelated to the ‘mild bump on the head of a kind which people suffer regularly and which has led to no long-term consequences at all’ when walking beneath the door lintel that was trivial and incapable of causing a ‘Symptomatic Possible TBI’ per the Mayo classification, let alone a mTBI.

D contended that the deterioration in his SSD symptoms that progressed into a genuine depressive disorder two months post-accident was stress mediated by the knowledge that he was about to be made redundant, a fact it was said by D he had lied about in the presentation of his claim; this alleged lie, coupled with consistent failure on embedded validity and stand-alone effort tests with both neuropsychological experts’ tests and alleged exaggeration in his presentation in various material aspects of the claim formed the basis for D’s positive strike out defence of fundamental dishonesty pursuant to Section 57 of the Criminal Justice and Courts Act 2015.

The Court preferred C’s case to D’s case and C’s experts to D’s experts wherever there was material disagreement.

Specifically, the Court found that PTA of a few minutes was sufficient to give rise to a mTBI and, importantly that it was possible to suffer PTA without showing any obvious signs of confusion.

Further the Court accepted a concession made by D’s neurologist that he had experienced patients with ‘pretty innocuous head injuries … sustained in sport who have had enduring symptoms going on for many years’ and the Court saw no basis to distinguish sporting injuries from the facts of this case.

Further, the Court found that ‘the evidence of the severity of the impact is a relatively poor indicator of the likelihood of a person suffering mTBI’.

The Claimant recovered c. £509,000 in damages and an additional c. £50,000 pursuant to CPR 36.17(4)(d) and some of his costs to be assessed on an indemnity costs.

Final judgment

D v. B 26.04.21

(Unrep)
26.04.21

Barristers involved: Marcus Grant
A 68-year-old man recovered £600,000 in respect of injuries sustained in an unusual accident.

On his case, he was assisting one of his employer’s drivers by acting as his banksman in a tipping operation at an industrial waste site, when the rear door on a tipper lorry swung as the trailer elevated, striking him on the back of his head and upper back, rendering him unconscious.

B denied the claim on the basis that D was not an employee, but a trespasser on the site, putting him to proof that the accident occurred as he alleged and asserting that he likely sustained injury from falling, denying that the trailer rear door hit him.

D was able to point to a recording of a 999 call by the lorry driver providing a description of the accident that matched D’s version of events.

D sustained a fracture to the C2 laminae bilaterally, a mTBI with a subarachnoid haemorrhage and psychological injury.

At the time of the accident D was a cancer survivor and reasonably frail. After the accident he became frailer and lacked capacity to litigate.

Directions were given to try liability as a preliminary issue and the above offer emanated from ADR for the liability issues. It was approved subsequently by Matthew Gullick QC, sitting as a Judge of the High Court.

Mustard v. Flower & Flower & Direct Line Group 11.04.21

[2021] EWHC 846 (QB)
11.04.2021

Barristers involved: Marcus Grant
Judicial ruling on propriety of mentioning fundamental dishonesty in a pleading in an injury claim. Master Davison handed down a reserved judgment intending to discourage pleas of fundamental dishonesty which are merely speculative or contingent.

The Defendant served an Amended Defence in a head injury claim that pleaded, inter alia, the words:

"*The Claimant's accounts of the RTA and its immediate aftermath, and the nature and severity of her symptoms both before and after the accident have varied over time, are unreliable and are in issue. They have been exaggerated (or in the case of her pre-RTA history minimised) either consciously or unconsciously – the Third Defendant cannot say which absent exploring the issues at trial. In the event that the Court finds that the Claimant has consciously exaggerated the nature and/or consequences of her symptoms and losses, the Third Defendant reserves the right to submit that a finding of fundamental dishonesty (and the striking out of the claim pursuant to section 57 Criminal Justice and Courts Act and/or costs sanctions including the disapplication of QOCS) is appropriate*".

The Claimant contended that the Defendant should not be permitted to mention fundamental dishonesty in a pleading when there was no proper evidential basis.

The Court agreed and ruled that permission to include the words underlined would be refused. It found (at §22ii):

'*a plea of fundamental dishonesty has no real prospect of success and therefore, even pleaded on a contingent basis, does not satisfy the test for granting permission to amend'.*

The Court observed that such a pleading caused the Claimant prejudice because, per §22iii:

'*a plea of fundamental dishonesty has to be reported to the claimant's legal expenses insurers and opens up a theoretical possibility of them avoiding the policy ab initio. At the very least that will create an added burden of administration and costs. Furthermore, a finding of fundamental dishonesty has grave implications for the claimant and the proposed amendment, if allowed, would be apt to raise further fears and anxieties for which, at the present time at least, there is no proper basis'.*

Providing a reserved judgment that has been reported, the Master explained per §24:

'*What I am intending to discourage are pleas of fundamental dishonesty which are merely speculative or contingent*''.

A copy of the judgment can be found here.

T v. R 07.04.21

(Unrep)
07.04.21

Barristers involved: Marcus Grant
A 30-year-old ground worker recovered £500,000 in respect of injuries sustained in a road accident in which the van in which he was a passenger tipped over at speed, and slid on its side along the road surface

On his case, he sustained multiple soft tissue injuries, a mTBI, PTSD and a moderately severe depressive reaction amounting to an adjustment disorder.

He received two years of intensive rehabilitation from R's insurer following which he reported a residuum of enduring debilitating symptoms of pain, fatigue, impaired cognition, behavioural and psychological symptoms that precluded him from returning to work.

He presented with an array of maladaptive coping strategies that included alcohol abuse and a gambling habit that his growing family could not afford.

His case was presented on the basis that the interaction between the mTBI symptoms, the chronic pain and the psychological triggers were such that each component maintained and aggravated the others.

R's response was that T ought to have made a good recovery from his injuries with the rehabilitation and that conscious and unconscious mechanisms may explain the persistence of the subjective symptoms. R pointed out that the litigation was a powerful maintaining factor and that his future prognosis was significantly more promising than that presented by his own experts.

The above settlement sum represented a compromise between the parties' respective positions.

K v. M 1.04.21

(Unrep)
01.04.21

Barristers involved: Marcus Grant
Recovered an additional £266,000 for a Pro Bono client in a professional negligence claim against a solicitor.

Acting through Advocate, the Pro Bono Charity of the Bar, Marcus represented a young solicitor in a professional negligence claim against her former solicitor for under-settling her claim for damages for post traumatic fibromyalgia following a car accident.

Her claim was settled shortly before the third anniversary of the accident for £95,000 after a draft Schedule of Loss was presented quantifying her future loss of earning capacity by reference to a modest claim for a Blamire award, at a time when all treatment options had not been exhausted, and the prognosis for further recovery was guarded.

The professional negligence claim was framed on the basis that a reasonable and competent injury solicitor would have involved a specialist post traumatic fibromyalgia counsel who would have advised against settling for £95,000; instead they would have recommended starting proceedings and monitoring the prognosis as the Claimant exhausted all treatment options recommended by her medico-legal rheumatologist before reverting to him for a final prognosis.

Further, it was alleged that on the facts of the case, that it was negligent to present the Claimant's future loss of earning capacity claim by reference to a broad brush Blamire approach when binding case law (Bullock v. Atlas Ward Structures Ltd [2008] EWCA Civ 194 & Kennedy v. London Ambulance Service NHS Trust [2016] EWHC 3145) suggested that such an approach should only be adopted if a multiplier-multiplicand approach would throw up an obviously unreal result.

The claim settled for a further £266,000 through negotiations at a JSM with the professional indemnity insurer and its Counsel, without the need to issue proceedings.

Thompson v. NSL Limited

[2021] EWHC 679 (QB)
25.03.2021

Barristers involved: Marcus Grant
Claimant permitted to increase her cost budget by £96,500 following an application under CPR 3.15A.

Master McCloud handed down a reserved judgment in an application made under the new CPR 3.15A which came into force in October 2020 replacing CPR 3.7, affording the Court a discretion to permit a party to vary their costs budget in the event of being satisfied that there has been a significant development.

On the facts in this head injury case, a Court in February 2019 budgeted the following phases of the parties' costs budgets: Issue / Statements of Case, CMC, Disclosure, Witness Statements, Experts and ADR, leaving the phases of PTR, Trial Preparation & Trial to be budgeted at a later date.
For a combination of reasons identified in the judgement, the Master acceded to the Claimant's application that there had been

'significant developments' in the case and permitted her to increase her budget by £96,500 over the six phases already budgeted. The Defendant did not request any equivalent increase to its budget.

In exercising her discretion, the Master considered earlier reported decisions in the cases of: BDW Trading v Lantoom Ltd [2020] EWHC Civ. 2744 (TCC), Al-Najar v The Cumberland Hotel (London) Limited [2018] EWHC Civ. 3532 (QB) & Sharp v Blank and Others [2017] 3390 (Ch.D.).

The Master restated the principle from Al-Najar '*that as a matter of policy the bar for what constitutes a significant development should not be set too high because otherwise parties would always err on the side of caution by making over-generous assessments of what was to be anticipated*'.

She confirmed that CPR 3.15A did not change the principle in BDW Trading that '*the thrust of the previous case law under rule 3.7 (the predecessor to that rule) and that once the 'threshold' of a significant development is met the court is entitled to acknowledge that may have knock-on developments to subsequent phases in the case.'*

The judgment can be seen here.

M v. H 23.03.21

(Unrep)
23.03.21

Barristers involved: Marcus Grant
A 57-year-old lawyer recovered £680,000 in respect of post traumatic tinnitus sustained in a rear-end shunting road accident.

M sustained a standard whiplash injury in a modest rear-end shunting accident from which both vehicles could be driver from the scene.

On the day of the accident he went on to develop bilateral tinnitus. The pain from the soft tissue injuries settled quickly but the tinnitus persisted. M continued to experience the following sound (on mid volume) in both ears:
https://www.youtube.com/watch?v=0HIfqyHbKgY&t=19s

This became intolerable in any work environment requiring quiet contemplation to concentrate on reading and assimilating written documentation in order to discharge the professional needs of his legal practice.

He sought treatment which did not help and was forced to abandon his legal practice. After. Period of adjustment he found alternative work as a lorry driver, the noise of the vehicle's engine extinguishing much of the tinnitus sufficient to enable him to concentrate on driving.

H's response was initially one of disbelief; subsequently H sought to attribute the tinnitus to pre-existing psychological vulnerability and sought to undermine the value of M's legal career by reason of that vulnerability, whilst simultaneously arguing for a more optimistic future prognosis.

The case settled through negotiation.

K v. K 20.01.21

(Unrep)
20.01.2021

Barristers involved: Marcus Grant
£1.05m settlement for a 50-year-old doctor who developed chronic pain following a whiplash injury.

A then 43-year-old doctor working part time in the pharmaceutical industry and part time as a locum GP sustained a whiplash injury in a moderately severe rear-end shunting road accident.

She developed a well-defined area of pain in her cervical and thoracic spine with symptoms in her right shoulder that did not respond to extensive courses of conservative treatments via physiotherapy, osteopathy and several trigger point injections. On her case, she developed an impingement in the shoulder from the secondary postural sequelae to the whiplash injury.

On her case, she developed a cluster of heightened anxiety and low mood symptoms that just hit the threshold for PTSD for a short period and for an Adjustment Disorder for a longer period.

She has no prior orthopaedic or psychological vulnerability that predisposed her to a poor outcome following trauma.

She persevered with her work; her earnings increased over the 18 month period after the accident. However, slowly she had to make incremental adjustments to her work and home lives to accommodate her pain as her attempts to buffer it weakened over time. She gave up her pharmaceutical work at the third anniversary of the accident and then resumed it on a reduced part time basis from the fifth anniversary.

The Defendant's response was to assert that no symptoms beyond the anniversary of the accident could be attributed to it. Instead, any subjective report of spinal pain was attributable to coincidental symptoms from previously asymptomatic degenerative changes; further, that the shoulder pathology was wholly unrelated.

The Defendant asserted that her presentation contra-indicated a biopsychosocial model of chronic pain because there was no pre-accident vulnerability and no diagnoseable psychological response to the accident.

The case settled through negotiation against that evidential matrix.

DEF v. S & M (Unrep) 15.12.20

15.12.20

Barristers involved: Simon Browne QC Marcus Grant
Ellenbogen J approved a £12m settlement for a 24-year-old who sustained a severe brain injury in a road accident aged 9.

She sustained poly trauma including visible white-matter damage on CT to her frontal and temporal lobes.

Whilst she made a relatively good recovery in terms of her cognitive functioning, neuropsychometric testing revealed some enduring weaknesses.

16 years later at the time of settlement aged 24, she presented with significant difficulties with inhibition, cognitive shifting, emotional control, self-monitoring, initiation, working memory, planning and organising, task monitoring and organising materials. She also presented with functional non-epileptic seizures.

By reason of her very severe executive difficulties including poor regulation, she was unable to lead an independent life.

The critical questions in the quantification of her claim revolved around the extent that the scaffolding of her support regime may be reduced over time in the future, her life expectancy, the likelihood of becoming a mother and the feasibility of her forming a sustainable relationship which may reduce her need for professional care.

The claim was settled through negotiation and approved by Ellenbogen J.

H v. H & H (Unrep) 19.11.20

19.11.20
Barristers involved: Marcus Grant

£550,000 settlement for a 43-year-old unemployed baker who sustained a brain injury in an unusual running down accident.

C became involved in an altercation during the hours of darkness in a poorly lit area with his wife and lover with them locked inside a car and him hitting the window with his fists.

D started the car and drove off dragging C whose hand became wedged in the nearside door handle by the forward momentum of the vehicle. He was dragged over a distance of 300 m and deposited on the main road when the vehicle drove over him causing serious injury.

Liability was disputed vigorously, D claiming that he was unaware of C's presence alongside his car until after he was deposited on the main road.

C sustained poly trauma including a traumatic brain injury and, for a time during the litigation, lacked capacity to litigate or manage his financial affairs. His health improved to the point where he recovered capacity by the time the claim was finally settled through negotiation, without admission of primary liability by D.

J v. D (Unrep) 11.11.20

11.11.2020

Barristers involved: Marcus Grant
The Claimant, a 61-year-old hotelier, recovered £1.2m in a negotiated settlement for injuries sustained in a road accident.

He was involved in a high speed rear end shunting accident when his motorcycle was struck from behind. He sustained a number of bony injuries and a suspected head injury.

As is common in such cases, his physical injuries predominated the acute and subacute recovery phases. However, it was the consequences of the head injury that became most debilitating in preventing him from returning to running his restaurant and hotel businesses as he would have liked.

He presented with a classic cluster of physical, vestibular, neuro cognitive, behavioural and psychological symptoms. The most disabling of these were his compliance mental fatigue, his disinhibited temper and his inability to read social cues.

On the basis of his experts' evidence, the diagnoses underpinning this enduring cluster of symptoms were technically 'moderate/severe' diffuse axonal injury by reference to the MAYO classification, concussion of the vestibular system, post-traumatic migraine and a mild neurocognitive disorder with behavioural disturbance due to traumatic brain injury (DSM V 331.83).

His standard MRI scans were 'normal. However, a DTI MRI scan at the 4th anniversary of the accident identified two areas of micro hemorrhage indicative of traumatic diffuse axonal injury within corpus callosum.

The Defendant's expert team dismissed any suggestion of traumatic brain injury, even in the face of the DTI scan, which they dismissed on the grounds of being a research tool, incapable of dating any artefacts, which in any event were more likely attributable to the claimant's pre-accident medical history of having suffered falls as an amateur jockey.

The Defendant attached weight to his failure on symptom validity and effort testing to insinuate that there was an element of psychological overlay in his presentation which may or may not have been volitional.

The Defendant contended that his hotel and restaurant business would likely have failed in any event by reason of the Covid pandemic.

The claim was compromised part way between the parties' respective best cases through a structured negotiation.

VXW v. A (Unrep) 28.10.20

28.10.20

Barristers involved: Marcus Grant
Lambert J approved a £4.48m gross of contributory negligence settlement for a 18-year-old who sustained a severe brain injury in a running down accident aged 11.

He went on to develop a moderate to severe dysexecutive syndrome presenting as a cluster of neuro behavioural difficulties including lack of empathy, poor insight, impulsivity, poor judgement, anger, irritability, obsessive compulsive behaviours, disinhibition and aggression.

The issues underpinning the settlement revolved around his need for support. Assessment of those needs were covered by the fact that he had pre-accident behavioural issues against the backdrop of some psychosocial disadvantages; further there was a question as to the extent that he would accept an expensive support worker regime, and the extent to which he had capacity to moderate his behavioural issues in the future.

Liability was compromised at an earlier stage in the case with the 60:40 split in C's favour. The insurer made an early settlement offer shortly after C reached his majority, which subsequently was accepted and approved by the court.

T v. R (Unrep) 04.09.20

04.09.20

Barristers involved: Marcus Grant
A 42-year-old ground worker recovered £756,000 in a negotiated settlement in respect of injuries to his foot and back and tinnitus sustained when the van he was driving was struck by an oncoming vehicle causing it to overturn. In addition, he sustained a mild traumatic brain injury and a major depressive disorder from which he made a good recovery by the 3rd anniversary of the accident.

He was unable to return to his physically demanding trade and his modest academic qualifications and dyslexia made it more difficult for him to return to remunerative employment. He worked hard with the Defendant's insurer's vocational rehabilitation consultant to try to return to the labour market; the evidence those attempts to find work generated of overt disability discrimination by prospective employers was arresting.

The issues between the parties revolved principally around the loss of earnings claim. The Defendant contended for a lower multiplicand and multiplier for the 'but for' scenario than the Claimant on the basis that he would likely have slowed down with age and retired from groundwork before his statutory retirement age. The Defendant also contended for a higher residual earning capacity and contended that the Ogden 8 Table B discount threw up an unrealistically low notional residual earning capacity.

Both parties moved away from their best case positions to achieve settlement through negotiation.

A v. G (Unrep) 30.07.20

30.07.2020

Barristers involved: Marcus Grant
A 40-year-old electrician recovered £550,000 in a negotiated settlement in respect of a leg injury sustained in a bicycle accident.

He sustained an 'open (compound) fracture dislocation of his left tibia and fibula with neurovascular compromise to the foot, a PTA kink inside the ankle joint, damage to the peroneal tendon, a Weber C fracture of the ankle and extensive degloving injuries over the left thigh and calf.'

He endured a long and painful period of rehabilitation following which, after the third anniversary of the accident, he managed to find full time lighter employment in South Wales where he lived.

The central issue between the parties concerned his notional earning capacity in the absence of the accident, because there were gaps in his work record for benign reasons (recovery from an earlier surgery and taking a year out to care for an elderly relative); also his residual earning capacity was not agreed with the Defendant suggesting that he was not 'disabled' within the meaning of Ogden 8.

The settlement represented a compromise between the parties' respective best cases.

G v. P (Unrep) 27.07.20

27.07.2020

Barristers involved: Marcus Grant
A 48-year-old carpenter recovered £2m in a negotiated settlement in respect of a leg injury sustained in a workplace accident when he fell from a ladder and sustained a 'Hawkins Type 2 talar neck fracture'.

The fracture did not unite and caused significant pain exacerbated by weight gain and immobility.

A decision was taken at the 4th anniversary to undergo an elective transtibial amputation and to proceed in life with prosthetics and aids and equipment to enhance his independence as an amputee.

The settlement sum reflected that he was unlikely to recover any significant earning capacity by reason of his skillset, enduring obesity problems and his age.

The focus of the dispute between the parties' respective valuations was on his professed need for single level, wheelchair-compatible accommodation at some point in the future and the immediate need for a battery-operated hydraulic prosthesis to be replaced at intervals together with back up and waterproof prostheses.

The settlement represented a compromise between the parties' respective best cases.

B v. W (Unrep) 09.06.20

(Unrep)
09.06.20

Barristers involved: Marcus Grant
The Claimant, a 60-year-old engineer, recovered £350,000 in a negotiated settlement for a whiplash injury and a head injury that triggered epilepsy two years later.

The Claimant, a 60-year-old engineer, recovered £350,000 in a negotiated settlement for a whiplash injury and a head injury that triggered epilepsy two years later.

speed rear end shunting accident. He developed a whiplash injury and on his case and moderate/severe TBI comprising microscopic diffuse axonal injury.

He reported a cluster of physical, vestibular, cognitive, behavioural and psychological symptoms commonly associated with a concussive head injury.

His GCS was normal, there was no recorded loss of consciousness and repeatedly normal CT and 3T MRI scans of his brain. Retrospective PTA assessment using the Rivermead protocol revealed surprising gaps in his memory of events over the 72 hour period after the accident.

Roughly 3 months after the accident he developed déjà vu episodes that were the precursor to his first grand mal epileptic seizure 25 months post-accident. Two further grand mal seizures followed and he was treated with powerful anti-epileptic medication which exacerbated his cognitive fatigue.

He continued to work full time over the 5 year period after the accident and the claim comprised his future reduced earning capacity, his past additional costs associated with a 1,000 day driving ban and future costs associated with a heightened chance of needed dementia care in later life.

The Defendant did not accept that there was any TBI. It contended that there was no association between a whiplash mechanism and TBI. She contended that diagnosing a TBI purely by reference to a rPTA assessment was unsafe. She advanced a differential diagnosis of Functional Cognitive Disorder, notwithstanding no pre-accident history of psychological vulnerability, and notwithstanding the fact that C had battled on working full time with his symptoms.

The Defendant contended that the epilepsy was probably cryptogenic (i.e.: constitutional and coincidental) and the claim for a heightened risk of dementia care was not countenanced.

The claim was compromised part way between the parties' respective best cases through a structured negotiation.

E v. S (Unrep) 08.06.20

(Unrep)
08.06.20

Barristers involved: Marcus Grant
The Claimant, a 57-year-old dry liner, recovered £750,000 in a negotiated settlement of a claim for brain injury and orthopaedic injuries sustained in a work place accident. He was left with an enduring cluster of physical, vestibular, cognitive, behavioural and psychological symptoms.

His case was presented on the basis that the most debilitating feature of his enduring symptoms was a dysexecutive syndrome that made him unable to think laterally or cope well with stress or change, necessitating a degree of supervision and light touch prompting.

It was asserted that he would not be able to return to any remunerative employment, and that the level of dependence on his wife was unsustainable going forward and needed to be replaced by a case manager and a light touch support worker regime. Further, it was contended that he was at a heightened risk of dementing which would necessitate a more expensive care regime if the risk eventuated.

The Defendant accepted the technical severity of the brain injury but felt that his recovery was such that he ought to be capable of some remunerative employment following a short burst of case management and rehabilitation, but that there was no long term need for external care and that any claim for a heightened chance of dementia-induced future care was too remote and/or speculative.

A further issue in the case was whether it was acceptable for the Claimant to instruct a forensic account to reconstruct his pre-accident earning capacity from bank statements in the absence of satisfactory accounting records.

The claim was compromised part way between the parties' respective best cases through a structured negotiation.

W v. M (Unrep) 23.05.20

(Unrep)
23.05.20

Barristers involved: Marcus Grant
The Claimant, a 38-year-old personal shopper, recovered £703,000 in a negotiated settlement in respect of a lower leg injury sustained in a running down accident that evolved into a centrally-sensitised chronic pain condition.

The Claimant, a 38-year-old personal shopper, recovered £703,000 in a negotiated settlement in respect of a lower leg injury sustained in a running down accident that evolved into a centrally-sensitised chronic pain condition.

The Claimant sustained a significant fibula fracture, ankle dislocation and a compartment syndrome. He had a poor outcome to

surgery and was left with an antalgic gait exacerbated by a 20° equinus deformity. He developed symptoms of chronic pain in the leg and some psychological symptoms. His weight increased by 5–6 stone and his mobility was compromised leaving him with compromised stamina for activities of daily living including work and raising his children.

He brought a claim for lost earning capacity, the need for ongoing loss of services, a modicum of personal care and for facilitating single level accommodation.

The Defendant contested the extent of the alleged earning capacity, contending that he would not have earned as much as he claimed in the absence of the accident and that he was capable of earning more than he conceded going forward. It was asserted that he did not need any ongoing care and that he did not need single storey accommodation.

The claim was compromised part way between the parties' respective best cases through a structured negotiation.

H v. L (Unrep) 18.03.2020

(Unrep)
18.03.2020

Barristers involved: Marcus Grant
A 32-year-old charity worker recovered £4.83m in a negotiated settlement in respect of devastating leg injuries sustained in a train accident.

She was dragged along a train platform by a moving train after her rucksack became caught in the train's closing doors, and pulled out of the station without the driver realising what was happening. She suffered devastating leg injuries and secondary psychiatric injury. A failed tendon transfer left her with weakness in one of her shoulders.

One leg was amputated shortly after the accident and she battled to save the other leg over the five-year period after the accident. She elected to have that leg amputated shortly after the date of settlement.

The case was novel in that it addressed the viability of having the more expensive Empower prosthetics for a double amputee for the first time.

The case raised the usual arguments in amputation cases as to the need for motorized prostheses, and the reasonableness in expecting tortfeasors to fund them, given that they are significantly more expensive than non-motorised prostheses.

Questions arose with regard to life expectancy, need for bespoke accommodation, child care costs and an appropriate career model in the absence of the accident.

Macdonald (By His Litigation Friend Lindsay Macdonald) v Burton 13.03.2020

[2020] EWHC 906 (QB)
13.02.2020

Barristers involved: Marcus Grant
Martin Spencer J acknowledged that there was a need to record expert appointments in some higher value cases to protect litigants (mainly claimants) against experts who are 'incompetent or worse'. This case followed on from the decision in *Mustard v Flower.*

What are the practical implications of this case?
The practical implications of this case is that claimants will be permitted going forwards subject to the circumstances of the case, to record defendant medico-legal appointments (with the exception of the neuropsychometric testing element of neuropsychological appointments which requires additional safeguards), provided that they have first recorded their own experts of like discipline. They must disclose a copy of that recording with their experts' evidence, as part of their experts' evidence.

What was the background?
The claim arose out of an accident in 2016. The claimant sustained serious injuries including a traumatic brain injury which has led to neuropsychological deficits. The injuries were serious and the consequences are, to some extent or other, permanent.

In April 2019, the claimant was examined by a Dr Sembi. The defendant proposes to instruct a Professor Kemp to examine the claimant and carry out neuropsychological testing on him for the purpose of producing a report in answer to that of Dr Sembi.

In August 2019, the claimant's solicitor wrote to the defendant's solicitors explaining that the claimant/his mother had been advised to record his consultations with the defendant's medical experts as an aide memoire and to protect him against errors.

An order was sought allowing the claimant to record the examination by Professor Kemp and the neuropsychological testing which was strongly resisted by the defendant.

What did the court decide?
The court acknowledged that a recording of a medicolegal appointment was the best evidence as to what was, or was not said by both a claimant and an expert. The court observed that what went on at a medicolegal appointment was frequently a point of dispute between the parties. The court acknowledged that recordings obtained historically by claimants both covertly and overtly had shown a lack of competence on the part of experts that could have resulted in injustice without the recording.

However, the court was quick to emphasise that poor methodology on the part of an expert was not restricted to defendants' experts, and that if recording evidence is to be admitted into evidence, there needed to be a level playing field and transparency in which defendants should be able to review what was said during the claimants' expert appointments too.

The fact that an appointment was being openly recorded would likely eliminate much of the mischief underpinning the desire to record, in that the questioning would likely be fair, methodology sound etc. It was observed that in the vast majority of cases, the recordings would not need to be listened to because the 'vast majority of experts instructed are competent and honest'.

On the thorny question of recording neuropsychometric testing, which involves use of proprietary testing material that would lose its value if it fell into the public domain, the court found that additional safeguards would need to be implemented to avoid that happening. The court was informed that the British Psychological Society's Division of Neuropsychologists was contemplating instituting a blanket prohibition of recording of medicolegal neuropsychometric testing. The court ruled that such a blanket prohibition would be 'disappointing' given that recordings had revealed a 'lack of competence of certain experts instructed in this field'.

Finally, the court indicted that it was reluctant to provide any 'ex cathedra guidelines or instructions' given that it was aware that the joint working party of APIL and FOIL was working through these issues to come up with a solution which satisfies the interests of justice from the point of view of both claimants and defendants.

F v. M (Unrep) 24.02.2020

(Unrep)
24.02.2020

Barristers involved: Marcus Grant
A then 27-year-old hotel manager sustained a whiplash injury in a road accident in which his vehicle was hit from the front imposing violent deceleration forces to his spine. He stretched out his left arm across his front seat passenger during the accident, which was not sufficient to activate his car's airbags or prevent the car being driven c. 1 hour home.

Over the ensuing hours and days he developed acute neck pain with referred symptoms down the arm; x-ray, MRI and nerve conduction studies over the following weeks were all normal. The pain persisted and over the ensuing c. 5 + years he presented at intervals with symptoms of CRPS and lost much of the use of the arm.

It was his case that he sustained a mild stretching traction injury to the brachial plexus sufficient to generate chronic pain in a narrowly confined distribution, insufficient to leave any diagnostic footprint on scanning.

Subsequently he developed moderately severe clinical depression as a consequence of the enforced lifestyle changes. These included having to abandon his career and his aspirations to study for an MBA and thereafter continue his career in the US.

He had undergone all appropriate treatments for his condition and the prognosis for any significant recovery 5+ years later was gloomy.

The Defendant's expert team was skeptical that there was any underlying organic pathology to explain the presentation, in large part because there was a two day delay in the documented report of any brachial plexus symptoms, which the Defendant averred would have been experienced immediately.

The Defendant disavowed the diagnosis of CRPS, attributing any physical manifestations associated with that diagnosis to disuse of the limb.

Having invested huge sums in surveillance evidence of the Claimant over 22 days across the course of three years in the UK, US and Greece, the Defendant advanced a differential diagnosis of Somatic Symptom Disorder to explain the Claimant's presentation, averring that the litigation was a principal maintaining factor and that the prognosis post-litigation was optimistic. The Defendant also suggested an element of exaggeration, though was unsure whether it was conscious or unconscious.

The Defendant requested permission to rely on expert neurological evidence to supplement his shoulder expert.

The Claimant's neurological expert was able to demonstrate that a delayed onset of brachial plexus symptoms in cases where there was a stretching of the brachial plexus was common, with the mean time of onset being 6 days post-trauma in a prospective controlled 2001 study of 121 patients. The Claimant's neurological presentation past the 5th anniversary of the trauma fitted with the diagnosis provided by his medico-legal peripheral nerve surgeon.

The case settled through negotiation against that evidential matrix.

J v. T&G (Unrep) 06.02.20

(Unrep)
06.02.2020

Barristers involved: Marcus Grant
A 41-year-old warehouse worker recovered £1.146m in a negotiated settlement in respect of a brachial plexus injury and consequential losses sustained in a motorcycle accident.

He underwent two surgeries to effect a tendon transfer in an attempt to recover some of the lost movement in the arm; the surgeries failed and resulted in him developing acute abdominal infections which left him in a critical state for over 12 months.

The case was rendered more difficult to value because of a congenital immunodeficiency disorder that had implications to his life expectancy, and to his ability to his ability to have worked through to retirement age in the absence of the accident. Also he was a brain injury survivor having sustained a very severe TBI 20 years earlier.

He intimated a claim for MyoPro orthoses from the US to provide greater function to his flail arm, which was a novel head of claim in the UK.

In addition the Defendants maintained allegations of contributory negligence.

The case settled through negotiation against that evidential matrix.

O v. D & S (Unrep) 22.01.20

22.01.20

Barristers involved: Marcus Grant
A 43-year-old social worker recovered £1.165m in a negotiated settlement in respect of injuries and consequential losses sustained in two road accidents 10 months apart.

A 43-year-old social worker recovered £1.165m in a negotiated settlement in respect of injuries and consequential losses sustained in two road accidents 10 months apart.

She sustained soft tissue injury to her spine (a 'whiplash associated disorder') following the first accident, a rear end shunt, which also caused her a loss of restorative sleep. Over the ensuing 6-8 weeks the nature of the pain became more widespread and diffuse and was accompanied by a flu-like malaise and headaches. She was unable to continue her work and her mood became depressed. By the 6th month anniversary her GP began to suspect fibromyalgia and referred her to a rheumatologist.

Before she saw the rheumatologist the second accident happened. It was objectively more serious and more frightening than the first. It caused a significant flare in her centrally sensitized chronic pain symptoms and PTSD. Her already fitful sleep patterns became further fragmented and she descended into a deep depression and became sufficiently dysfunctional that she was forced to abandon any attempt at work and required assistance from Social Services to run her domestic activities, to include caring for her children.

She underwent an array of bespoke treatments for fibromyalgia and depression and PTSD but was left past the 6th anniversary with enduring disabling symptoms. She brought a claim for compensation for the consequences of post-traumatic fibromyalgia.

The defendants (represented by the same legal team) instructed a team of experts who disavowed the diagnoses of fibromyalgia and/or post traumatic fibromyalgia and suggested that her presentation was a product of probable prior psychological vulnerability, a somatic symptom disorder and exaggeration, either conscious or subconscious. The defendants asserted that domestic or personal care with aids and appliances were contra-indicated and would merely reinforce a sense of disability that was entirely psychological. They anticipated a swift and full recovery post litigation with the assistance of an individualized programme of psychiatric and psychological intervention and that she would likely make a full recovery within 2 years.

The case settled through negotiation against that evidential matrix.

Chan v. London Bus Company (Unrep) 14.11.19

14/11/2019

Barristers involved: Marcus Grant
A 51-year-old IT Trainer sustained a brain injury in a cycling accident in London when cut up by a bus.

It took him 4 years to secure a liability compromise 99% in his favour before any rehabilitation could commence.

He was left with acute fatigue and a reduced ability to cope with hassle and reduced motivation and heightened anger. He was unable to return to his career, but his loss of earnings was militated by a generous PHI policy paying 75% of his salary at the time of the accident.

The battleground between the parties was whether so many years post-accident he needed, or would accept a comprehensive support package comprising a head injury trained case manager and some support worker involvement for the rest of his working life.

A further issue between the Parties was whether there was a heightened dementia risk in old age and, if so, whether it should be quantified now on a chance basis rather then tied up on a provisional damages award.

It was agreed that he had borderline capacity with the presumption of capacity provided under the mental Capacity Act 2015 preserved.

The parties negotiated a compromise of these issues with a lump sum award of £700,000.

The Defendant asked for the settlement to be approved by a Master by reference to the Court's inherent jurisdiction under s. 19(1) of the Senior Courts Act 1981, applying the principle established by Teare J in Coles v. Perfect [2013] EWHC 1955, notwithstanding the fact that the presumption of capacity was not displaced.

Master Cook acceded to that request and approved the settlement.

D v. T (and others) (Unrep) 06.11.19

06.11.2019

Barristers involved: Marcus Grant
A 35-year-old panel installer recovered £4m in a negotiated settlement in respect of injuries and consequential losses sustained in a high-energy head-on car accident.

He sustained multiple injuries. Most of which progressed to full, or nearly full resolution with the exception of a dysexecutive syndrome pursuant to frontal lobe damage. Whilst his neuropsychological test scores were more or less normal, he presented with symptoms of a personality change.

He appeared to be relatively intact and functioned well in predictable and consistent environments which placed low demands upon him. However, as soon as any situation became more demanding or less predictable, or he was required to think on his feet, even in relatively mundane tasks, his dependence and inability to function independently became apparent. His lack of insight and judgement, anger, irritability, depressive, anxious and other symptomatology, hypersexuality, disinhibition and apathy underscoring his dysexecutive syndrome necessitated an ongoing support in his life.

The cost of that support would be significantly higher if his marriage were to fail.

The issues between the Parties were his employment prospects in life before the accident, the stability of his marriage, the level of support that he needed or would accept, whether he needed larger accommodation to meet his needs, his life expectancy and his increased risk of dementia.

The case settled three months before trial through negotiation against that evidential matrix.

Mustard v. Flower & Flower & Direct Line Group – 11.10.2019

[2019] EWHC 2623 (QB)
11/10/2019

Barristers involved: Marcus Grant
Judicial ruling on admissibility of covert recordings in injury claims.

Marcus Grant, instructed by Dickinson Solicitors, represented a Claimant in the High Court who was permitted to rely on such recordings.

Master Davison handed down a detailed judgment on the admissibility of covert recordings, including recording of neuropsychological testing in a head injury case.

The Claimant recorded her appointments with all six of the Defendant's experts, four overtly and two covertly. She was asked to stop the recording of the neuropsychological appointment part way through the neuropsychological testing, attempted to do so but, in fact, failed to do so.

The Claimant's neuropsychologist reviewed the recording of the Defendant's neuropsychological appointment and observed significant deviations from correct procedure and was critical of her technique and methodology. The Defendant's neuropsychologist relied in part on her test scores in reaching her formulation that characterised the Claimant in terms that stopped just short of an allegation of outright dishonesty.

The Defendant accepted that all six recordings were relevant and probative to issues in the case in that they raised legitimate questions of the experts, but nevertheless asked the Court to refuse the Claimant permission to rely on them because they were illegal because they breached the GDPR and the DPA 2018, because they were unfair as the Claimant had not recorded her own experts and because they were discourteous to the experts. One expert reported that she felt "professionally violated, distressed, angry and disillusioned" by the recording.

The Court rejected the Defendant's submissions, finding that the recordings were not unlawful, that they did not breach the GDPR or the DPA 2018 and that the Overriding Objective clearly favoured admitting the recordings into evidence, subject to providing safeguards that the recording of the proprietary test materials of the neuropsychological testing did not enter the public domain.

The Court found that the Claimant's motives for wanting to record the Defendants' appointments were "in the context of adversarial litigation, understandable" and found that " Whilst her actions lacked courtesy and transparency, covert recording had become a fact of professional life".

The Court picked up on, and commended to the legal profession, a suggestion from Claimant's Counsel in submissions:

"the sooner that there can be some kind of protocol agreed between the Association of Personal Injury Lawyers and the Forum of Insurance Lawyers which governs the recording of medico-legal examinations the better. It is the interests of all sides that examinations are recorded because from time to time significant disputes arise as to what occurred"

The Court was critical of a series of Part 35 Questions asked of the Defendant's experts on the grounds that they were disproportionate and overwhelmingly not for the purposes of clarification and amounted to cross-examination.

Mustard v Flower Ors – Master Davison's approved judgment – 11.10.19

H v. A (Unrep) 04.07.19

4 July 2019

Barristers involved: Marcus Grant
A 46-year-old driver recovered £1.46m gross of a 25% reduction for contributory negligence in a negotiated settlement in respect of a concussive head injury sustained in a bicycle accident.

His bicycle was struck from behind by a car travelling in excess of 50 mph causing him to be thrown into an embankment, rendering him unconscious for c. 15 minutes and leaving him with a reduced GCS of 13/15 for the first 45 minutes after the accident

He was left with a syndrome of physical, cognitive and behavioural symptoms that his expert team attributed to microscopic diffuse axonal injury to the white matter pathways within the brain, leaving him, inter alia, with a damaged judgment centre and acute cognitive fatigue. Also he sustained damage to his balance apparatus leaving him with enduring impaired balance and intermittent vestibular migraines. He also suffered mild PTSD and depressive symptoms, all of which remitted with in vivo exposure therapy and CBT.

His case was advanced on the basis that he would never work again and that he would need light touch case management and some support worker assistance to cope with independent living. He lived with his retired parents since the accident.

The Defendant's experts were more cautious about a diagnosis of diffuse axonal injury in the absence of macroscopic corroboration on MRI and rejected any suggestion of brain injury. They considered that his enduring subjective cluster of symptoms was attributable in part to pre-morbid vulnerability and personality traits and in part were being maintained by psychological factors, and that any damage to his vestibular system was amenable to treatment, such that with the litigation behind him he would be able to live independently with external support and may even achieve some residual earning capacity.

The case settled through negotiation against that evidential matrix.

D v. D (Unrep) 28.06.19

28 June 2019

Barristers involved: Marcus Grant
A 48-year-old University Lecturer recovered £700,000 net of any of contributory negligence that may have been found at trial for

failure to wear a cycle helmet in a negotiated settlement in respect of a concussive head injury sustained in a bicycle accident.

He fell from his bicycle at a speed of < 10 mph when a car pulled across his path. He landed on his back with the back of his head also striking the road. He was concussed but suffered no loss of consciousness and his GCS remained normal throughout and head scans were normal. However, there was evidence of PTA consistent with a mTBI on the basis of his experts' evidence. He developed anxiety triggers fulfilling the diagnostic criteria of PTSD. Also, he sustained a thoracic compression fracture that was not a source of disability beyond the sub-acute phase of his recovery.

This apparently mild TBI had a marked effect on his ability to operate at a high intellectual level over sustained periods as a university lecturer and researcher. This was illustrated by the pattern of his neuropsychological test scores that indicated that he was operating in the 'high average' or 'superior' domains across all indices save for processing speed which was c. 40 points below his full scale IQ.

He struggled on in academia, attempting to buffer the physical, cognitive, behavioural and psychological changes brought about by the concussive head injury for a period of c. 3½ years before going off work and being forced out of his profession.

The Claimant's experts explained this presentation as the neuro-psychiatric complications that sometimes accompany a small minority of mTBI patients throughout the chronic phase of their recovery leaving them with lasting disability. The mTBI in question was microscopic diffuse axonal injury.

The Defendant's experts observed that the pattern of dysfunction, i.e.: subjective symptoms deteriorating over time, contraindicated any significant organic brain injury and considered the presentation was entirely psychologically mediated and contributed to significantly by stressors unrelated to the consequences of the accident.

The case settled at the above level 4 weeks before trial through negotiation.

B v. V (Unrep) 29.03.19

29/03/2019

Barristers involved: Marcus Grant
A 42-year-old railway worker recovered £700,000 in a negotiated settlement in respect of a concussive head injury which led to neuropsychiatric complications. The mechanism of injury was being struck in the face by a falling scaffolding pole resulting in orbital fractures and PTSD.

One of those complications was alcohol dependency, a problem that manifested and progressed after the insurer's withdrawal from the rehab code left him homeless and living rough.

Further complications thrown up by the facts of the case included a prior peripatetic work history, a previous injury claim for chronic pain and PTSD in an earlier workplace accident and volatile contact proceedings with an ex-partner that pre-dated the accident. He also had a caution for being in possession of a controlled substance in the year of his accident.

His case was predicated on the basis that there was a neurological substrate to the enduring neuropsychiatric presentation, which provided for a gloomy prognosis past the 6th anniversary of the accident.

The Defendant's case was at variance to this, asserting that the accident had not changed the trajectory of his life materially; he was destined to become dysfunctional in the workplace and to have a chaotic private life and he always had a tendency to alcohol dependency.

The £700,000 settlement reflected a compromise between the Parties' respective positions.

X v. Y (Unrep) 05.03.19

05/03/2019

Barristers involved: Marcus Grant
£1.84 m settlement for a 45-year-old man who suffered a ceiling collapse on his head.

Simon Browne QC and Marcus Grant represented the Claimant who was left with enduring neuro-psychiatric and vestibular symptoms.

C was aged 39 at the time of the accident. He was the principal breadwinner for his family. He had a pre-accident history of psychological vulnerability and a period of alcohol dependency a few years before the accident.

After the accident he developed a cluster of symptoms that included impaired memory, heightened fatigue and irritability and impaired balance coupled with headaches and tinnitus. He attempted to continue working for roughly a year after the accident in a demanding job. From the anniversary of the accident his condition deteriorated as he became increasingly isolated from the world around him. He gained weight, developed tics and a speech and movement disorder and his ability to mobilise was significantly compromised by impaired balance and obesity.

A prolonged period of in-patient treatment in a head injury unit failed to break the deadlock in his symptoms. The principal diagnoses to explain his presentation were functional neurological disorder compounded by the consequences of a concussive head injury, probably including an element of DAI and damage to his peripheral vestibular system.

On his case, the prognosis was very guarded and he needed support from a case manager and a support worker and lacked capacity to litigate.

The Defendant was suspicious of C's presentation throughout and found it hard to attribute his florid presentation to the objectively modest blow to his head. It attributed his presentation in part to prior vulnerability and questioned whether there was a volitional element to his presentation; whatever, the precise aetiology of his cluster of symptoms, the Defendant was optimistic that there was a good chance of a full recovery with treatment outside the constraints imposed by the litigation. The Defendant did not accept that the presumption of capacity was displaced.

The settlement reflected a compromise between the Parties' respective positions.

H v. L (Unrep) 01.03.19

01/03/2019

Barristers involved: Marcus Grant
A 24-year-old lady recovered £3.1m in a negotiated settlement in respect of a brachial plexus injury and a concussive head injury sustained in a car crash

She was the front seat passenger in a head on car crash at the age of 18. Four years earlier she sustained a severe brain injury in a riding accident that left her with a residuum of cognitive symptoms and a mild left sided hemiparesis.

On her case, she sustained a brachial plexus injury and a further brain injury, that was at least 'mild', and possibly 'moderately severe' in terms of technical severity, but which had a disproportionate impact on her mental stamina and cognitive and executive functioning because of the cumulative effect of successive head injuries. Her problems were compounded by the significant deficits from the brachial plexus injury. The bulk of her claim arose from her care needs and lost earning capacity.

The Defendant did not accept that she had sustained any significant brain injury and sought to attribute the bulk of her subjective report of compromised cognitive function and reduced mental stamina to the consequences of the earlier riding accident. It sought to argue that she did not need extensive support from a support worker or from a nanny in due course and that there was no need for enduring case management.

The £3.1m settlement reflected a compromise between the Parties' respective positions.

AXW v. BXY (Unrep) 03.12.2018

03/12/2018

Barristers involved: Marcus Grant
Dingemans J approved a £4.78m settlement for a 26-year-old motorcycle head injury crash victim who was left with enduring behavioural symptoms when he was aged 20. Marcus Grant represented the Claimant.

The Claimant was an apprentice vehicle diagnostician when he had the accident. On his case, the legacy of his technically 'severe' TBI was a dysexecutive syndrome that affected his judgment centre. His neuropsychological test scores were unremarkable; however, six years later, after the benefit of neurological rehabilitation, he was unable to hold down remunerative employment by reason of his dysexecutive presentation. He needed support from a Case Manager and Support Workers to supplement the gratuitous assistance he received from his wife and mother. On his case, his dysexecutive syndrome displaced the presumption of capacity to litigate and manage his financial affairs. Further, on his case, there was no scope for further improvement and he faced a heightened risk of dementia and marriage breakdown.

The Defendant challenged whether he had a dysexecutive syndrome at all, suggesting that his behavioural issues were mediated largely by pre-existing personality traits and post-accident psycho-social stressors overlaying a brain injury from which he had made a good recovery. The Defendant contended that he was capable of learning strategies from his support workers to cope with much greater independence in life, even to the point of possibly managing some low-grade part time remunerative employment. The heightened risk of dementia and marriage failure were denied. It was contended that the presumption of capacity was not displaced.

The settlement reflected a compromise between the Parties' respective positions.

D v. P (Unrep) 22.11.2018

22.11.2018

Barristers involved: Marcus Grant
Marcus Grant represented a 50-year-old sales manager who sustained thoracolumbar and wrist fractures and PTSD in a high energy head-on road accident, and compromised her claim for damages in the sum of £1m.

She was left with chronic pain and sub-clinical psychological symptoms that compromised her physical stamina for full time work and for maintaining her substantial house and garden. Her partner died in the accident.

After several years of rehabilitation for the acute effects of her injuries, she found herself part time work, and asserted that her enduring symptoms prevented her from returning to her pre-accident levels of function at home and in the work place.

The Defendant challenged to the top line of her loss of earnings claim, as to how much and how long she would have earned her pre-accident salary in the absence of the accident; also, he challenged the modest level of her residual earning capacity, contending that she could earn more. A late application by the Defendant 4 months before trial to adduce employment evidence to bolster that assertion was dismissed.

The case settled through negotiation 7 weeks before trial part way between the Parties' best positions.

P v. I (Unrep) 21.11.2018

21.11.2018

Barristers involved: Marcus Grant
Marcus Grant represented a 47-year-old senior manager who sustained a soft tissue neck injury when she was knocked from her bicycle by a van, compromised her claim for damages in the sum of £675,000.

She was left with a narrowly defined area of chronic pain over the left side of her neck that became progressively more intrusive following prolonged periods of sitting at a work station in an office environment. She found that she needed to lie down to take the weight of her head off her shoulders every few hours to relieve the build-up of pain. These symptoms of chronic pain proved to be resistant to several courses of different chronic pain treatments, and she was left to manage the symptoms with pacing strategies that involved having short periods of rest lying down throughout each working day.

She felt unable to cope with her demanding office role and instead set up in business as a personal trainer instructing clients with injuries or vulnerabilities. In that role she was able to control her postural and physical activity levels and able to lie down and rest when required.

The agreed medical evidence was that she probably could cope once more in a full time office role, provided that she could find a sympathetic employer prepared to make some adjustments. She would be unlikely to operate at her pre-accident level of responsibility or earnings.

She presented her claim on the basis that it was reasonable for her to have made her career choice to move from better paid office work to less well paid personal training work providing her with certainty and control over her coping strategies for the enduring symptoms.

The Defendant contended that her decision to work as a personal trainer was a lifestyle choice and not attributable to the accident and challenged both the top and bottom lines of her loss of earning capacity claims.

The case settled through negotiation shortly before trial part way between the Parties' best positions.

M v. S (Unrep) 16.11.2018

16.11.2018

Barristers involved: Marcus Grant
Marcus Grant represented a 44-year-old café proprietor who sustained a mild traumatic brain injury and developed chronic neuropathic pain and headaches in a high energy car accident, compromised his claim for damages in the sum of £250,000.

He was left with a syndrome of physical, cognitive, behavioural and psychological symptoms that restricted his stamina for functioning effectively in the workplace and in the home. He presented with several seizures treated by the NHS with anti-convulsants but probably non-epileptic in origin and psychiatrically mediated. He continued to complain of intrusive neuropathic pain that was treated with powerful opiates (Morphine Sulphate initially followed by Oxycodone). The side effects of the addictive medication soon became the principal maintaining factor to his enduring symptoms. He developed an addiction to the Oxycodone, the side effects from which included acute fatigue that so compromised his cognitive function and stamina in the café he ran with his wife.

He had no track record of deriving any income from the café business over several years before the accident and had difficulty demonstrating an obvious loss of earning capacity by reason of his injuries.

He required multidisciplinary treatment and the consensus amongst the medical experts was that his prognosis with optimum treatment was optimistic, provided he could be weaned off the Oxycodone, and that he ought to be fit enough to return to full time manual work if he so chose within 12 months of settlement.

The settlement reflected the fact that the prognosis, whilst broadly optimistic, was far from certain and that there was a complex interplay between the enduring MTBI symptoms and the chronic neuropathic pain, each representing a poor prognostic indicator to the other.

G v. B (Unrep) 10.09.2018

05/11/2018

Barristers involved: Marcus Grant
Marcus Grant represented a 23-year-old retail worker who recovered £620,000 in respect of a leg injury in a cycling accident which befell him at the age of 18.

He was left with enduring symptoms of pain and reduced stamina for prolonged weightbearing and loading that left the leg unsuited to his preferred trades of bricklaying or working in the motor trade. On his case he had suffered a significant reduction in earning capacity in being forced to look for less physically demanding work away from these trades.

The Defendant was more circumspect about his potential earning capacity in the absence of the accident and more optimistic about his residual earning capacity, contending that his residual subjective symptoms were probably less intrusive than he was making out.

The case settled through negotiation part way between the Parties' best positions.

T v. E&T (Unrep) 07.09.2018

05/11/2018

Barristers involved: Marcus Grant
Marcus Grant represented a 35-year-old Trainee Paramedic who recovered £700,000 in respect of a bladder injury whilst attempting to assist in lifting a bariatric patient.

On her case she sustained a low back strain requiring medication that then resulted in her suffering bladder distension leading to an acontractile bladder which caused her profound urinary complications, leading to an entrenched depressive disorder. She was unable to work, needed to self-catheterise for life and required a lot of care in her home life.

The defendants denied liability, and challenged causation and raised issues regarding her pre-accident vulnerability which would have impacted on her earning capacity and on the prognosis of her enduring subjective symptoms, of which a significant component was psychiatrically mediated.

The case settled through negotiation part way between the Parties' best positions.

P v. B & A (Unrep) 06.09.2018

05/11/2018

Barristers involved: Marcus Grant
Marcus Grant represented a 27-year-old dock worker who recovered £1.75m in respect of a brain injury in a high energy road accident.

He was left with a disabling syndrome of physical (including vestibular), neuro-cognitive, neuro-behavioural and psychological symptoms that precluded him from being able to work, and in need of at least a light touch support regime involving a case manager and support worker.

The Defendants contended that he had made a significantly better recovery than he had realised, that the current support regime was unnecessary, that he probably was capable of some remunerative employment and capable of living independently without the need for any ongoing support regime beyond the short term. On their case it was a modest six figure claim. Further, the Defendants raised late in the day evidence that speculated that he had an undiagnosed cardiac condition that might have impacted on his earning capacity and life expectancy in the absence of the accident.

The case settled through negotiation part way between the Parties' best positions.

U v. E (Unrep) – 24.08.2018

24/08/2018

Barristers involved: Marcus Grant
Marcus Grant represented a 31-year-old highway worker who recovered £643,000 in respect of a brachial plexus injury to his non-dominant arm sustained in a motorcycle accident where liability was contested.

It was common ground that C was riding his motorcycle too fast through a residential street in Ipswich, subject to a 30 mph speed limit, when D, travelling in a car in the opposite direction, turned right across his path. It was common ground that D did not see the motorcycle before impact.

Reconstruction experts were not agreed on C's speed prior to braking. C's expert estimated it to have been c. 45-50 mph; D's expert's estimate was in excess of 65 mph.

Recent case law in June 2018 from the QBD in Macpherson v. Smith [2018] EWHC Civ 1433 suggested that the range of contributory negligence against C was likely to be between 50% and 75% depending upon which reconstruction expert's evidence was preferred.

The case settled through negotiation part way between the Parties' best positions.

M v. M (Unrep) – 08.08.2018

21/08/2018

Barristers involved: Marcus Grant
Marcus Grant represented a 61-year-old construction worker who recovered £495,000 in respect of a head injury in a workplace accident following which he developed epilepsy. He managed to continue working, albeit in difficulty and with a colleague covering for him for two years after the initial accident when he injured his head again whilst having a seizure. His employment was terminated 18 months after that second incident and he developed depressed mood following the loss of his job and financial security and suffered further seizures and some suicidal ideation.

His case was that he had developed a disabling syndrome of physical (including vestibular), neuro-cognitive, neuro-behavioural and psychological symptoms attributable to the original accident, that he was permanently unfit for work and needed a burst of case management and support worker assistance and some light touch case management thereafter, together with a heightened risk of dementia and a reduced life expectancy.

C's case was not accepted by the D who considered the severity of any head injury to be minimal, notwithstanding the confirmed epilepsy, and that any enduring symptoms (to the extent that their self- report was reliable) were largely psychologically mediated and would resolve swiftly following the conclusion of the litigation and receipt of some CBT such as to enable C to return to some level of remunerative employment. D placed considerable emphasis on failure of effort testing with its neuropsychological expert which was evidence of a measure of conscious exaggeration. It denied any need for case management, support workers or heightened dementia risk.

The case settled through negotiation part way between the Parties' best positions.

L v.L (Unrep) – 25.07.2018

21/08/2018

Barristers involved: Marcus Grant
Marcus Grant appeared for the Claimant, a 34-year-old English teacher working in China who recovered £535,000 in respect of a head injury in the UK that left him with a syndrome of physical, neuro-cognitive, neuro-behavioural and psychological symptoms

consistent on his case with diffuse axonal brain injury.

Notwithstanding his injuries, four years after the accident he studied for an MBA in London. His case was that the enduring syndrome of symptoms compromised his mental stamina for full time employment, or employment involving significant responsibility and exercise of judgment.

The Defendant considered that C had made a good recovery from the effects of his head injury, as evidenced by his ability to study for an MBA and observed that there was little objective evidence of any of the enduring symptoms of which he complained and the trajectory of his presumed earnings in the accident was far from clear given his peripatetic pre-accident pattern of earnings.

The case settled through negotiation part way between the Parties' best positions.

Q v. M (Unrep) – 23.07.2018

21/08/2018

Barristers involved: Marcus Grant
Marcus Grant represented a 50-year-old factory worker who recovered £375,000 in respect of a head injury in a workplace accident when he stood up whilst standing on a table and struck his head on a metal hook attached to a crane overhead.

He was unusually vulnerable to the cumulative effects of head injury having sustained a serious brain injury as a child and a further significant head injury as a young adult. He was left with some enduring cognitive deficits from these head injuries which limited the type of work he could do before the index accident.

The accident objectively was an innocuous incident but triggered a disabling syndrome of physical (including vestibular), neuro-cognitive, neuro-behavioural and psychological symptoms that precluded him from being able to work beyond the 20th month anniversary of the accident (he struggled on in his work until that point and was then made redundant for reasons unrelated to the head injury). He needed external assistance from a case manager and a measure of light touch support worker involvement. Whilst he was vulnerable to the cumulative effects of head injury, his case was that he was functioning well before the accident and it was responsible for the syndrome of symptoms that followed.

D denied liability. It also denied any significant head injury beyond a mild concussion and rejected the suggestion that the accident was the trigger for a deterioration in his presentation. The fact that he was able to continue working for 20 months contraindicated any significant injury and the presentation was largely explicable by psychological processes in relation to stressors unrelated to the accident.

The case settled through negotiation part way between the Parties' best positions.

H v.L (Unrep) – 18.07.2018

21/08/2018

Barristers involved: Marcus Grant
Marcus Grant appeared for the Claimant, a 51-year-old unemployed lady who recovered £1.7m in respect of serious injuries to her right leg in a scooter accident. She underwent multiple operations on her leg, knee and ankle following which her mobility was severely restricted.

She lived in a Grade 2 listed house that was unsuited for her mobility needs and could not be altered to accommodate them easily. The bulk of her claim comprised claims for care and equipment and alternative accommodation. She brought her accommodation claim relying on the principles in George v. Pinnock.

The claim was defended on the basis that further recovery was likely that would eliminate much of the claimed care, equipment and accommodation claims.

The case settled through negotiation part way between the Parties' best positions.

H v.F (Unrep) – 13.07.2018

21/08/2018

Barristers involved: Marcus Grant
Marcus Grant represented a 41-year-old nurse who recovered £672,000 in respect of a centrally sensitized chronic pain condition that developed following a low speed rear end shunting road accident causing soft tissue injury.

It was common ground between the parties that any orthopaedic soft tissue injury sustained in the accident was short lived and that her presentation was maintained solely by psychological factors.

The critical issues in the case were related to causation and quantification, principally her vulnerability to developing an equivalent condition in the absence of a compensable adverse life event, prognosis and need for a care regime.

On the face of her clinical history C did not appear to be unduly vulnerable psychologically to life's adverse events. However, she had suffered a catastrophic response following the accident and, 5 years later, was mobilising over short distances with crutches or in a wheelchair.

C's experts were gloomy about her prognosis; D's experts were optimistic about her prognosis, contending that the litigation was a significant impediment to her recovery; further, D asserted that a significant care regime was contraindicated by the condition.

The case settled through negotiation part way between the Parties' best positions.

P v.W (Unrep) – 11.07.2018

21/08/2018

Barristers involved: Marcus Grant
Marcus Grant represented a 59-year-old self-employed taxi driver recovered £500,000 in respect of an ankle injury that progressed into CRPS following a tripping accident.

She received optimum treatment for the CRPS which did not allay her symptoms. She developed significant body dysmorphia and was unable to work and needed some assistance at home; also, her two storey home was unsuitable for her compromised mobility needs. An accommodation claim was brought relying on George v. Pinnock.

The case was defended on the basis that she had made a good recovery by about the 2nd anniversary of the accident when she was initially discharged from the specialised CRPS team at the RNOH and that her presentation to D's experts thereafter was contaminated by conscious exaggeration.

The case settled through negotiation part way between the Parties' best positions.

C v.D (Unrep) – 07.07.2018

21/08/2018

Barristers involved: Marcus Grant
Marcus Grant represented a 55-year-old benefits assistant who recovered £400,000 net of CRU and interims in respect of a centrally sensitized chronic pain condition (diagnosed as 'fibromyalgia') that developed following a rear end shunting road accident causing soft tissue injury.

On her case the chronic widespread pain emerged over the course of 6 months following the road accident, the mechanism being pain-induced sleep disturbance.

The enduring symptoms at the 4th anniversary of the accident were sufficient to prevent her from working and in need of some care and assistance at home, which had been provided by her husband.

The claim was defended on the basis that the mechanism of the chronic widespread pain was rejected, and that the symptoms were probably a manifestation of psychological vulnerability that pre-dated the accident; further, that the litigation had sought to maintain the intensity of the symptoms that would likely recede with appropriate psychologically based treatment and that the provision of care was contraindicated by the condition which required her to keep active and to be self caring.

The case settled through negotiation part way between the Parties' best positions.

Hibberd-Little v. Carlton – 06.07.2018

[2018] EWHC 1787 QB
21/08/2018

Barristers involved: Marcus Grant
Marcus Grant, instructed by Christopher Dickinson of Dickinson Solicitors Limited appeared for a 35-year-old claimant teacher who brought a claim for damages for the consequences of a syndrome of enduring physical (including vestibular), neuro-cognitive, neuro-behavioural and psychological symptoms she claimed were caused by a rear-end shunting car accident that exposed her head to acceleration-deceleration forces. She claimed, through her experts, that this syndrome of enduring symptoms was likely attributable to diffuse axonal injury ["DAI"] to the connections and pathways of the white matter of her brain.

The defence asserted that this diagnosis was improbable, pointing to the fact that no subjective cognitive, behavioural or psychological complaints were recorded in the A&E notes when assessed for a whiplash injury 2 hours after the accident, an occupational health doctor's assessment for possible stress at work c. 6 weeks post-accident, a medico-legal GP's assessment c. 6 months post-accident or a physiotherapist's assessment for treatment of the effects of her whiplash injury c. 12 months post-accident.

Whilst accepting that there was no psychological explanation for the enduring syndrome of symptoms and no non-DAI neurological explanation, the defendant through her experts did not proffer any alternative clinical or non-clinical explanations for the reported syndrome of symptoms. The Defendant's experts accepted that the reported syndrome of symptoms was consistent with DAI, but was unlikely to be DAI attributable to the index accident because of the absence of cogent contemporaneous recording of the symptoms.

Whilst the Court (HHJ Saggerson sitting as a Judge of the High Court) found C unreliable as a witness with regard to aspects of her recollection regarding the nature and effect of the impact of the syndrome of reported symptoms in the early post-accident period, it found that she was not dishonest and that her report and presentation of symptoms was not coloured by malingering or conscious exaggeration.

The Court accepted that in addition to sustaining a significant whiplash injury that left C with permanent nuisance-level symptoms, she sustained some psychological injuries in the form of sub-clinical PTSD and OCD which were successfully treated by the 3rd anniversary of the accident.

It found that she had failed to discharge the burden of proving her claim of diffuse axonal injury, following the dicta in Pickford v. ICI [1998] 1 WLW 1189 and Newman v. Laver [2006] EWCA Civ 1135 in resolving an injury claim on the basis of burden of proof, without making any finding as to the probable explanation of C's presentation of enduring symptoms.

C's damages were assessed in the sum of £41,250.

Permission to appeal the Order has been sought from the Court of Appeal.

P v.S (Unrep) – 01.06.2018

21/08/2018

Barristers involved: Marcus Grant
Marcus Grant represented a 54-year-old ex-head teacher who settled his stress at work claim for a six-figure sum on the eve of trial, 6 years after his employment was terminated.

On his case he had been exposed to an unsatisfactory system of work that required him to assume a disproportionate workload in a failing comprehensive school without sufficient support from his LEA, that resulted in him developing psychological illness that elevated the risk of cardiac arrest, a risk that eventuated some 3½ years after his employment as a head teacher was terminated.

The claim was defended on the basis that there was no breach of any duty of care, and insufficient knowledge that the system of work was hazardous to his health, and that irrespective of any alleged breach of duty, it was not causative of his ill health which was probably attributable to unrelated lifestyle factors.

The case settled on the eve of trial between the Parties' best positions

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C v.D – 23.05.2018

[2018] EWHC 1240 QB
21/08/2018

Barristers involved: Marcus Grant
Marcus Grant, instructed by Nick Godwin of Slater & Gordon Solicitors, appeared for a widow whose late husband was killed in a running down accident when he was struck by a car travelling at 86 mph in a 40 mph zone during the hours of darkness.

At the time of the accident C was in the process of divorcing her husband for infidelity after being a couple for > 27 years and married for 10 years; they were living apart and she had already obtained a decree nisi.

The two principal issues at trial were whether or not the deceased was guilty of any contributory negligence and whether C could establish a real (as opposed to a fanciful) chance of a dependency based on the marriage being salvageable in the absence of the accident. The central point of evidence with regard to the latter was whether, once C had received advice about the financial ramifications of proceeding to a decree absolute, a decision that would have left her financially unsupported by her husband after the age of 52 (her youngest child's 18th birthday and 5 years post-accident) C would have reconsidered her decision to divorce and elected to remain in the marriage (her late husband wanted to save the marriage).

After a two-day trial, C won the first issue (no finding of contributory fault was made) but lost the second issue (the Court finding that the chance of the marriage being saved was fanciful (Davies v. Taylor [974] AC 207 followed).

Cockerell v. CXK Limited and the Artwise Community Partnership – 17.05.2018

[2018] EWHC 1155 QB
21/08/2018

Barristers involved: Marcus Grant
Marcus Grant, instructed by Alexander Cohen of Brian Barr, appeared for a claimant who developed CRPS following a tripping accident in the course of her employment at premises occupied by a Third Party.

C failed to see a steep step in a Victorian-era constructed community centre, tripped and fell sustaining an ankle injury which developed into debilitating CRPS.

She was employed by D1 as a Career's Adviser and instructed to attend D2's premises to provide a lecture. Upon her arrival at the premises for the first time, C walked through an open doorway into kitchen area without realising that there was a step down the other side of the doorway. She tripped and fell.

D1 failed to risk assess the building before the accident. D2's risk assessment provided three control measures for the risk posed by the step: (1) black and yellow hazard warning tape across the width of the lip of the step; (2) an instruction to all users that the door should be kept closed at all times; & (3) a prominent warning sign of the existence of the step on the door.

At the time of the accident one of D1's servants or agents allowed the door to be propped open, having not been instructed by D2 that this should not happen, thereby depriving C of the benefit of control measures (2) and (3) above.

The Court (Rowena Collins-Rice sitting as a Judge of the High Court) found that the existence of control measure (1) the hazard warning tape was, on the facts of the case, sufficient to discharge any common law duty of care owed by the employer, D1 to C (Section 69 of the Enterprise and regulatory Reform Act having deprived C of any statutory causes of action against her employer) and equally sufficient to discharge D2's statutory duty of care to take reasonable steps to safeguard visitors under Section 2 of the Occupiers Liability Act 1957.

Lovett v. HCPC – 10.05.2018

[2018] EWHC 1024 Admin
21/08/2018

Barristers involved: Marcus Grant
Marcus Grant, instructed by Christopher Dickinson of Dickinson Solicitors Limited, appeared for the Appellant psychologist in appealing a decision of a Panel representing his regulatory body, the HCPC, in erasing him from the register.

The central point of the statutory appeal was whether the regulatory body had sufficiently pleaded the allegation of dishonesty that was ultimately found against the Appellant, whether the allegation had been properly put to him during the commuted time that he gave evidence, and whether it was open to the Panel to make the finding against him in circumstances where he became unable to complete his oral evidence or participate fully in his defence of the allegations by reason of his failing health.

The Court (Ouseley J) dismissed the appeal finding that whilst the allegation of dishonesty could and should have been pleaded, and put to the appellant more clearly, standing back and considering the quality of representation that the appellant had before the Panel below, he had sufficient opportunity to understand and respond to the dishonesty allegations that ultimately were found against him and, on balance, there were insufficient grounds for the appeal court to interfere with the Panel's exercise of discretion.

A v. B (Unrep) – 01.05.2018

01.05.2018

Barristers involved: Marcus Grant
Marcus Grant, instructed by Phillip Cohen of Brian Barr Solicitors, represented a 41-year-old trainee doctor who sustained soft tissue whiplash injuries in a rear end shunting road accident, which on his case then progressed into a chronic widespread pain condition diagnosed by his experts as fibromyalgia. He was able to continue working, despite his symptoms, but was forced to reduce his hours, which put back the date of his qualification as a doctor. His claim was presented on the basis that he had lost the chance of a more lucrative career in medicine as a consequence of the condition, for which the prognosis of significant further recovery was poor.

The Defendant admitted the soft tissue injury but nothing more. She asserted that the widespread pain condition, diagnosed as fibromyalgia, emerged too long after the car accident to establish a causal nexus and identified an array of alternative stressors in the Claimant's life that were more likely triggers. Furthermore, she contended that his prognosis was more optimistic and questioned the efficacy of his proposed career model.

The case settled through negotiation part way between the Parties' best positions.

D v. M (Unrep) – 30.04.2018

30.04.2018

Barristers involved: Marcus Grant
Marcus Grant, instructed by Phillip Cohen of Brian Barr Solicitors, represented a 36-year-old property developer who sustained a significant crush injury to his non-dominant hand when an anti roll bar on an excavator hired by his sub-contractor from a hire company rotated 180 degrees unexpectedly. The manufacturer had designed the roll bar to be held in place by a lynch pin held in place with an 'R clip'.

Over the years these had been lost and were replaced by the hire company with nuts and bolts. The vibration of the use of the excavator had caused the nuts to work their way loose and the bolts to fall out, such that the roll bar was only held in place by gravity, until the Claimant placed his hand on it.

A claim was brought solely in negligence against the hire company. Liability was denied. The damages claim was complicated because it involved a forensic accounting review of the impact of the injury on his ability to optimize the profitability of maintaining his property portfolio.

The case settled through negotiation.

S v. A (Unrep) – 24.04.2018

24.04.2018

Barristers involved: Marcus Grant
Marcus Grant, instructed by Chris Kardahji of Irwin Mitchell LLP, represented a 52-year-old pilot who sustained a whiplash associated disorder and psychological injuries in a head on car accident in which the other driver died. He was unable to work for 14 months after the accident and then returned to flying.

He continued to fly a full roster for the ensuing c. 4 years complaining of a narrowly defined band of thoracic pain, exacerbated by adopting certain fixed postures, including sitting with his arms in front of him when holding a joystick in a commercial aircraft. Also, he suffered headaches in the acute post-accident period which returned at the 5th anniversary of the accident.

His ability to tolerate this pain reduced with the passage of time to the point where he requested part time flying hours, was prescribed pain killing medication and had his licence to fly temporarily suspended by the CAA.

There were multiple issues in the case including the diagnosis and aetiology of his subjective complaints of pain, whether they were objectively sufficiently intrusive to warrant any reduction in his flying hours, whether he had failed to mitigate his loss by seeking part time hours, the prognosis, his likely career path as a pilot and his credibility.

The case settled through negotiation.

McIntosh v. Harman [2018] EWHC Civ – 06.04.2018

06.04.2018

Barristers involved: Marcus Grant
Marcus Grant instructed by Tristan Hallam of Penningtons Manches LLP, represented a Police Officer who sustained soft tissue injuries that progressed into a chronic widespread pain condition (fibromyalgia) after the Defendant drove into head on collision with her parked Police BMW on a fast, unlit country road at night.

At the time she was attending to a call to search for a missing person and was speaking to some pedestrians standing on a driveway on the opposite side of the road to which she was originally driving. She parked up on the wrong side of the road, switched off the BMW's head and side lights and switched on its white roof 'take down lights'.

The Defendant denied liability, stating that the take down lights were confusing in that they appeared to approaching drivers as though they were head lights of an oncoming vehicle in the far distance. He stated that he only realised very late that they were in fact lights on a stationary vehicle parked on the wrong side of the road. He braked late but could not avoid the collision.

The Master found the Defendant was negligent because he had the stationary BMW's take down lights in his vision for approximately eight seconds before impact and that he was negligent in failing to heed that the lit object ahead was stationary and on his side of the road.

Liability was apportioned 70% : 30% in the Claimant's favour. She was criticized for not making the BMW more visible to approaching motorists, by way of a combination of her head, side or hazard lights.

MXL v. Hussain & RSA – 29.03.18

29.03.18

Barristers involved: Marcus Grant
Mr Justice Martin Spencer approves £1.35m lump sum settlement in a brain injury case. Instructed by Amina Ali of Barings Solicitors. Marcus Grant instructed by Amina Ali of Barings Solicitors, represented a 27 year old pedestrian who sustained a severe brain injury in a running down accident when he walked into the path of a car at night whilst intoxicated.

It took 5 years to secure a 50:50 liability apportionment whereupon funding was made available to attempt to provide neuro-rehabilitation to treat the symptoms of a significant dysexecutive syndrome. The brain injury left his neuro-psychological executive functioning intact; however, his judgment centre was affected rendering him prone to making impulsive, erratic and often self-destructive decisions. He was of low pre-morbid intelligence with a forensic history which made the assessment of the 'but for' part of his claim difficult. Further he rejected much of the neurorehabilitation and follow-up support given to him and developed an alcohol and illicit drug dependency. An issue in the case was whether he would be overcompensated if he recovered damages for a support structure that he subsequently rejected. A global lump sum settlement was reached at £2.7m, reduced to £1.35m to reflect the liability apportionment.

M v. Gough – 28.03.18

28.03.18

Barristers involved: Marcus Grant
90 year old lady recovers £298,000 gross of contributory negligence for a shoulder injury in a running down accident. Marcus Grant, instructed by Amina Ali of Barings Solicitors represented the Claimant.

The Claimant was an 86-year-old widow living alone when she sustained a comminuted fracture to left proximal humerus that required fixing with a plate. She was left with a substandard shoulder but was fiercely independent and rejected any significant external care package. At the age of 89 the plate snapped and she needed to undergo shoulder replacement surgery which was successful in reducing the pain but left her with an effectively useless non-dominant upper limb and increased the risk of falling. She continued to resist the imposition of an expensive care package but did accept light touch support. The settlement reflected the heightened risk that she would need a significantly enhanced private care regime in the future. A 20% reduction in her damages was agreed to reflect an apportionment of liability between the Parties.

C v. Rashidzadeh & Churchill Insurance – 27.02.18

27.02.18

Barristers involved: Marcus Grant
32 year old healthcare manager recovers £950,000 for the consequences of a mild traumatic brain injury following a moped accident. Marcus Grant, instructed by Julie Reynolds of Julie Reynolds Solicitors represented the Claimant.

The Claimant was 27 at the time of the accident. He sustained fractures to his right arm and leg in the accident together with PTSD, depression, vestibular dysfunction and concussion. He made a reasonable recovery from the orthopaedic injuries but was left with a cluster of physical, cognitive, behavioural and psychological symptoms that rendered him unable to hold down sustained employment, despite trying, and unable to hold down a sustainable relationship. He received a lot of support from his family. 4½ years after the accident this cluster of symptoms was attributed to a probable mild diffuse axonal injury, a diagnosis resisted

fiercely by the Defendant's experts and some of his own experts, especially in the face of normal neuro imaging. However, the Defendant was not prepared to accuse him of fabricating or consciously exaggerating the symptoms which left the diagnosis/formulation of MTBI with lasting disabling symptoms as the most compelling explanation for his enduring dysfunction.

UK Insurance v. Gentry

[2018] EWHC 37
18.01.18

Barristers involved: Marcus Grant
Teare J finds Mr Gentry guilty of deceit and contempt of Court and sentences him to 9 months' imprisonment, suspended for 2 years

Marcus Grant appeared for UK Insurance ["UKI"] in bringing tort of deceit and committal proceedings arising out of a staged car crash that went to the Court of Appeal. Mr Gentry claimed that his Range Rover was written off in a road accident with UKI's insured, Mr Miller. UKI admitted liability on Mr Miller's behalf, made an interim payment of £14,000 for the pre-accident value of Mr Gentry's Range Rover. Mr Gentry, represented by Armstrong's Solicitors, issued and served proceedings on Mr Miller for general damages and £56,540 worth of credit hire charges, and secured a default judgment, which he sought to enforce against UKI.

Late in the day, UKI discovered that Mr Gentry and Mr Miller were known to each other, and applied 2 months late to set aside the default judgment. A District Judge allowed the application. Mr Gentry appealed to a Circuit Judge who dismissed his appeal. Mr Gentry appealed again to the Court of Appeal and won [2016] EWCA Civ 141, obtaining an order that UKI be bound by the default judgment and pay the costs of the action. On application by UKI, that Order was stayed pending the outcome of tort of deceit proceedings that were then issued and served.

The deceit action commenced in March 2016, asserting that the alleged accident was staged and the entire claim was predicated on a deceit. Also, UKI alleged contempt of Court against Mr Gentry pursuant to CPR 32.14 and 81.17(1)(a). Mr Gentry admitted the contempt on the limited basis that he lied about not knowing Mr Miller before the accident; however, he contested the deceit claim alleging that there was a genuine accident caused by Mr Miller's negligence. After a two-day trial on the deceit claim, Teare J found that the deceit proved to the requisite standard of proof, and found that the alleged accident was staged, and that Mr Gentry had conspired with two others to deceive UKI.

Teare J set aside all the costs orders in Mr Gentry's favour made by the Court of Appeal, ordering him to repay the sums paid to him by UKI and to pay UKI's costs of the earlier proceedings and of the tort of deceit and committal actions on an indemnity basis. He sentenced Mr Gentry to 9 months' imprisonment, which he suspended for 2 years on condition that he repay £1,250 pm towards the sums owed to UKI. Teare J relied on the early admission of the contempt, and on Mr Gentry's previous good character and the specific hardship that would be experienced by people around him if he were to be imprisoned, in deciding to suspend the sentence on terms.

Click here for a full copy of the judgment on Lawtel.

C v. Q – 03.11.17

03.11.17

Barristers involved: Marcus Grant
Dispensing Optician recovers £320,000 for a suspected mild Traumatic Brain Injury. Marcus Grant, instructed by Tom Ranson of Ashton's Legal, represented the Claimant.

Following a moderately severe rear-end shunting accident on the M1, this (then) 33-year-old Dispensing Optician sustained a whiplash injury and presented with symptoms of headaches, reduced memory and concentration, heightened mental fatigue, OCD character traits, reduced tolerance, impaired decision making and symptoms of post traumatic stress disorder.

Clinical assessment by his experts confirmed post traumatic amnesia (PTA) of between 15 and 30 minutes only, a normal GCS, no loss of consciousness, a normal MRI of the brain and no retrograde amnesia. He underwent a course of CBT and his PTSD symptoms remitted to a sub-clinical level. The enduring cluster of cognitive and behavioural symptoms remained. Despite them, he continued

working full time as a Dispensing Optician over the 5.5 years between the accident and settlement. On his case, this was only possible because of adjustments made by his employer in the workplace. Neurospychological testing by his expert revealed a subtle pattern of deficits in delayed working memory and processing speed tasks, against a backdrop of a pre-morbid superior intellect, that was consistent with a diagnosis of Diffuse Axonal Injury following on from mild Traumatic Brain Injury (mTBI).

The Defendant's experts accepted that the Claimant was a reliable informant but attributed his subjective cognitive and behavioural symptoms to a combination of pre-existing psychological vulnerability, post-accident anxiety attributable to the sub clinical PTSD and the stress of the litigation; Its experts contended that the residual symptoms that would settle post-litigation with CBT, leaving him at no disadvantage on the labour market. The experts in their reports and joint statements analysed the emerging literature on the incidence of chronic disabling symptoms amongst the enormous cohort of mTBI patients throughout the population, literature dating between 1943 and October 2017.

The case was settled through negotiation at a point between the Parties' respective best case scenarios.

O v. T – 25.10.17

25.10.17

Barristers involved: Marcus Grant
PA and Personal Trainer recovers £1.5 m for severe post traumatic fibromyalgia/somatic symptom disorder. Marcus Grant, instructed by Alex Cohen of Brian Barr Solicitors, represented the Claimant.

Following a modest rear-end shunting road accident, an otherwise fit and healthy PA and part time fitness trainer sustained a whiplash associated disorder that interfered with her ability to work normally and resulted in her being unable to achieve restorative sleep. Being unable to work effectively caused her anxiety. Over the course of c. 4-6 months after the accident her whiplash symptoms transformed into a more widespread diffuse aching throughout her body coupled with headaches, mental fatigue and impaired cognitive function. Seven months after the accident a rheumatologist diagnosed fibromyalgia although features of her presentation did not fit comfortably within the diagnosis. Over the ensuing five years her health deteriorated, and despite having access to a bespoke residential pain management course, her function declined to the point where she became largely wheelchair dependent and acquired significant care and housing needs.

On her case her presentation was explained by post-traumatic fibromyalgia; the nexus between the trauma and the subsequent fibromyalgia was not simply a temporal one, but one involving a mechanism of trauma-induced non-restorative sleep, specifically an inability to achieved Rapid Eye movement (REM) sleep. On her case, she did not present with any other self standing psychiatric disorder to explain part or all of her symptoms. The prognosis was poor and she would require substantial care and assistance for the rest of her life.

The Defendant's experts considered that her presentation on physical examination of exquisite pain that made it impossible to conduct a structured assessment for fibromyalgia was more suggestive of a psychiatrically-mediated disorder rather than post-traumatic fibromyalgia, and considered that somatic symptom disorder best encapsulated that presentation. They considered that she presented with perfectionist and driven character traits before the accident that rendered her vulnerable to descending into an equivalent psychiatrically-mediated chronic widespread pain state in the absence of trauma, or within a short period of her 38th birthday (her age at the time of the car accident). Furthermore, they contended that because the predominant explanation for her presentation was psychiatrically mediated, rather than organically mediated, the prognosis for substantial, though incomplete recovery was good; the treatment modality of choice was CBT, coupled with a functional restoration programme.

The case settled on day 6 of a trial in the Queen's Bench Division at a point between the Parties' respective best case scenarios.

R v. Q 13.10.17

13/10/2017

Barristers involved: Marcus Grant
28 year old Barrista Trainer recovered £2.2m after sustaining a multiple injuries in a car that overturned and struck a tree. Marcus Grant, instructed by Peregrine Redgrave of Stewarts LLP, represented the Claimant.

On her case the Claimant sustained an unstable T12 fracture that had partially united resulting in a kyphosis, a closed head injury causing significantly debilitating diffuse axonal injury at a microscopic level, injury to her vestibular apparatus causing vestibular migraine and significant neuropsychiatric sequelae. These injuries overlay a pre-accident psychological vulnerability and hypothyroidism and obesity. On her case, she wouldn't be able to work again and needed case management and support worker supervision into the long term future.

The Defendant contended that the head injury caused no more than mild traumatic brain injury and that any enduring subjective neurocognitive sequelae were psychologically mediated and capable of further improvement. The spinal fracture was stable and any kyphosis at the fracture site was minimal and unlikely to be a significant source of enduring disability. Any future need for care and support was more likely to be a reflection of significant pre-accident life challenges surrounding her significant psychiatric vulnerability and issues surrounding her hypothyroidism and obesity. In any event, she would not accept the sort of support package recommended by her experts.

The claim settled through negotiation at a point between the Parties' respective best case scenarios.

A v. W 12.10.17

13/10/2017

Barristers involved: Marcus Grant
36 year old Police Sergeant recovered £1.65m after sustaining a brachial plexus injury when her hand became caught in the door handle of a car being driven by a thief who was attempting to evade arrest. Marcus Grant, instructed by Tracey Benson of Slater & Gordon, represented the Claimant.

On her case the Claimant sustained a traction injury to the left brachial plexus and went onto develop a generalised plexopathy. Surgery aggravated her pain and she was left with chronic neuropathic pain in the left upper limb that brought about her medical retirement from the Police and in need of ongoing support. She had been on the Police High Potential Development Scheme and brought a claim for the loss of chance of a career up to the rank Assistant Chief Constable.

The Defendant admitted liability and the fact that she had sustained a brachial plexus injury that brought about an early medical retirement. The Defendant was more upbeat about her future, contending that any residual pain was psychologically mediated and capable of resolution with further psychological treatment after the conclusion of the litigation. The Defendant was more cautious in assessing her promotion prospects.

The claim settled through negotiation at a point between the Parties' respective best case scenarios.

B v. I 11.10.17

13/10/2017

Barristers involved: Marcus Grant
54 year old builder recovered £1.16m gross of 10% contributory negligence, after sustaining a head injury when he stumbled and fell on a defective brick on a set of steps leading to his rental property. Marcus Grant, instructed by Christopher Dickinson of Dickinson Solicitors represented the Claimant.

On his case, he sustained a closed brain injury comprising diffuse axonal injury at a microscopic level and PTSD, as a consequence of which he was unable to run his building business effectively, despite still working at a reduced level through to the date of trial. He presented with a cluster of physical, cognitive, behavioural and psychological symptoms that were consistent with a frontal lobe dysexecutive syndrome. In addition to being unable to work effectively, he separated from his wife, on his case on account of the consequences of his dysexecutive syndrome and needed supervision from a case manager and support worker into the future.

The Defendant viewed the case differently. In the absence of any identifiable damage on CT, no contemporaneous clinical observations of post traumatic amnesia or reduced Glasgow coma score, the Defendant contended that he probably did not sustain DAI or PTSD and that any perceived change in his character was a consequence of pre-existing personality traits and psychological vulnerability coupled with being advised incorrectly that he had suffered significant traumatic brain injury. The claim settled

through negotiation on the eve of trial in the QBD.

M v. C 13.09.17

13.09.17

Barristers involved: Marcus Grant
24 year old Factory Worker recovered £600,000 for the consequences of a compression fracture to the T12/L1 vertebrae. Marcus Grant (instructed by Daniel Denton of Slater & Gordon) appeared for the Claimant

In December 2013 the Claimant, then a 20 year old factory worker, sustained a compression fracture to the T12/L1 vertebrae when a stack of glass toppled over onto him. The fracture united leaving a 19° kyphosis. The normal expectation would be that such a patient would make a good functional recovery from such an injury. The Claimant developed chronic neuropathic and mechanical pain around the injury site that prevented him from coping with moderately physically demanding day to day activities, including manual work. On his case, the prospects for significant further functional recovery were modest. The Defendant's initial response through orthopaedic and psychiatric evidence was to assert that there was no organic or psychologically-mediated explanation for his presentation and that the likely explanation was a degree of conscious elaboration. After pain management experts became involved, more attention was paid to the bio-psychosocial model of chronic pain. The Claimant spent an interim payment on a 3 week domicillary pain management programme that made no material difference to his symptoms. His experts concluded that the residual symptoms were likely to be permanent, and that he needed to fashion a life for himself that could accommodate them. The Defendant's pain expert considered that a 12 month course of CBT post-settlement of litigation would bring about a substantial, though incomplete recovery, sufficient for him to resume independence in his work and home lives, subject to the restriction of having to avoid heavy manual activities.

C v. M 05.09.17

05.09.17

Barristers involved: Marcus Grant
38 year old former Police Officer recovered £492,000 for the consequences of an ankle injury and PTSD in a workplace accident. Marcus Grant (instructed by Phillip Cohen of Brain Barr Solicitors) appeared for the Claimant.

In March 2014 the Claimant, then a 35 year old Traffic Officer employed by Lancashire Constabulary, sustained a ligament injury to his right ankle and PTSD when forced to jump out of the way when the Defendant failed to stop after the Claimant attempted to waive him down. The ligament injury left him unable to run, despite two surgeries. The PTSD was moderately severe until about the 3rd anniversary of the accident, and required a 9 week in-patient stay before it was treated out to sub-clinical levels. His contract of service was terminated by the Lancashire Constabulary, by reason of the combination of his injuries and their residual symptoms. He made a good recovery from the PTSD, though was liable to relapse and recovered a good level of function in the ankle, though needed to avoid heavy physical activity and prolonged periods of being on his feet. The Defendant adduced medical evidence that suggested the ankle symptoms represented an acceleration of inevitable problems 10-15 years hence, and psychiatric evidence that suggested that any genuine PTSD pathology was probably unrelated to the index incident because of the delay in which those symptoms were reported to his treating doctors.

The settlement, achieved through negotiation, reflected a compromise between the Parties' respective positions.

R v. H 23.08.17

23.08.17

Barristers involved: Marcus Grant
46 year old middle manager recovered £579,000 for the consequences of a diffuse axonal brain injury and vestibular damage sustained in a workplace accident. Marcus Grant (instructed by Mark Ellis of CFG Law) appeared for the Claimant.

In December 2012 the Claimant, then a 41 year old middle manager employed by Hewlett Packard, sustained a blow to the back of his head when he slipped on a pool of water in a client's office bathroom, and was rendered unconscious for a few minutes. Thereafter he presented with a cluster of physical, cognitive, behavioural and psychological symptoms, the most debilitating of which were pervasive mental fatigue and impaired balance, that rendered him unfit to return to work. With the passage of time and some treatment, he was able to engage in a limited set of activities that included driving short distances and attending a gym, and to assist once a week in a homeless shelter, but was unable to cope with the demands of his job. His team of experts diagnosed the cluster of enduring symptoms as the consequence of likely diffuse axonal injury to the white matter of his brain, together with a peripheral vestibular lesion interfering with his balance mechanism and secondary impaired mood and heightened anxiety-mediate psychiatric pathology, associated with the likely brain injury and with the enforced lifestyle changes. The Defendant's team of experts rejected any suggestion of white matter damage to his brain, even at a microscopic level in the absence of corroborative radiological imaging, and suggested instead that the residual reported subjective symptoms, to the extent that they were genuine, were the product of a pre-accident psychological vulnerability and a misinformed iatrogenic belief system; further the Defendant asserted that they were capable of being reversed with CBT post settlement. Concerns were raised about the Claimant's credibility because various Facebook posts and photographs appeared to contradict the sedate and sedentary lifestyle he described to the doctors. The Claimant had the benefit a PHI policy that paid out 2/3 of his income.

The settlement, achieved through negotiation, reflected a compromise between the Parties' respective positions.

Nielson v. Argos 28.04.17

28.04.2017

Barristers involved: Marcus Grant
43-year-old Warehouse Worker recovered £539,000 for post traumatic fibromyalgia following a workplace accident – Marcus Grant instructed by Steven Akerman of Brian Barr Solicitors represented the Claimant.

A Warehouse Worker for Argos fell backwards landing heavily on her right sacro-iliac joint and right wrist, sustaining soft tissue injuries. Her ability to achieve restorative sleep was immediately compromised by pain.

Over the ensuring weeks and months the pain evolved and spread to all four quadrants of her body and was accompanied by pervasive fatigue and cognitive impairment.

She continued to battle on at work for c. 2½ years after the accident, relying on sympathetic colleagues to carry her and on powerful neuropathic medication to dull the pain. Over time, she became increasingly depressed about her failing health and then went off work.

She was diagnosed with fibromyalgia that became progressively more disabling. She spent £7,995 on a 3-week residential multi-disciplinary pain management programme that did not break the deadlock of her symptoms. The prognosis for further recovery thereafter was poor.

The Defendant did not accept that her fibromyalgia was post-traumatic; instead it asserted that it represented a constitutional vulnerability that would have occurred in any event, either at around the time of the accident or, alternatively in any event within 6 or 7 years of the accident. It asserted that the prognosis for further recovery was good.

The case settled through negotiation at a joint settlement meeting.

Warren v. Masters 22.03.17

22.03.17

Barristers involved: Marcus Grant
Widow recovers £150,000 from a landowner in respect of the death of her husband killed by a falling branch from one of his trees. Marcus Grant instructed by Nick Godwin of Slater & Gordon, represented a 68-year-old widow whose 64 year old husband died when a branch from an oak tree struck his passing car on an A road in Berkshire. Liability was disputed.
It was accepted that the landowner of mature trees adjoining the highway owed a duty of care to road users to carry out periodic

inspections by a LANTRA trained tree inspector. It was accepted that no such inspection was carried out before the accident. However, it was disputed that the accident would have been avoided had such an inspection been carried out. The thoroughness of the inspection was not agreed, as to whether a drive by inspection sufficed, or whether the inspector needed to be on foot. The Claimant contended that failure of the branch that fell was foreseeable to a reasonably competent LANTRA tree inspector either on foot on in a drive by inspection because of the branch's length (13 m), weight, shallow angle (almost horizontal which imposed greater leverage at the junction with the trunk where it subsequently failed) and a large occlusion close to the junction with the trunk (indicative of a likely source of rot beneath). The Parties commissioned expert arboricultural evidence that reached conflicting views. The Claimant was only able to run the case at all because of Google Earth images of the branch in its pre-failure state. The case settled through negotiation shortly before trial.

Liverpool Victoria v. Yavuz & 8 Others 06.04.17

06.04.17

Barristers involved: Marcus Grant
HHJ Wood QC permits committal proceedings for contempt of Court to proceed against 9 injury claimants. Marcus Grant instructed by Marsha Crossland of DWF LLP, represented Liverpool Victoria Insurance who applied to commit to prison for contempt off Court nine members of the Turkish community in North London who brought injury claims arising from three alleged accidents.

The Insurance company relied on similar fact evidence to confirm links between the identity of the nominal insureds in whose name policies of insurance had been taken out; no premiums were paid on the policies, connected bank accounts and email addresses were used to set up the policies and neither the named insureds nor their cars could be traced. The alleged accidents occurred 80 miles away from where they allegedly resided. Links could be made between the occupants in two of the three accidents and a link was established between a claimant in the third alleged accident and the director of an accident management company that was used by all nine claimants.

The claimants in the county court action below discontinued their claims on the first day of a 5 day trial where a single Judge was asked to hear them consecutively. Liverpool Victoria contended that they were contrived collisions fabricated for the purpose of attempting to perpetrate insurance fraud. Had the claims succeeded, the Liverpool Victoria would have been faced with a costs bill of £170,000.

HHJ Wood QC sitting as a Judge of the High Court considered the similar fact evidence satisfied the of strong *prima facie* evidence threshold test, and considered that it was both proportionate and in the public interest that the committal action proceed to a full trial.

Barnes v. Seabrook [2010] EWHC 1849 and *South Wales Fire & Rescue v. Smith* [2011] EWHC 1749 considered.

Maguire v. Carillon Services Limited 31.03.17

03.04.17

Barristers involved: Marcus Grant
HHJ Main QC accepted evidence of a scientific link between trauma and fibromyalgia. Marcus Grant instructed by Lindsay Ryan of Brian Barr Solicitors, represented a 54 year old civil servant who was involved in a lift accident.

She suffered pain and shock following the incident during which she though she would die. Within weeks she developed widespread pain affecting all four quadrants of her body accompanied by headaches and cognitive impairment. Her cluster of symptoms was diagnosed by her treating clinicians as Fibromyalgia and PTSD. The Defendant rejected any suggestion that she had suffered more than a short lived soft tissue injury and that her presentation was either pathological or fabricated or both. They advanced a differential explanation of somatic symptom disorder (via its psychiatrist) and pre-existing constitutional fibromyalgia (via its rheumatologist).

Fibromyalgia is a chronic pain condition that affects many members of the population. It is a rheumatological condition that is poorly understood. Many insurers have contended for many years that there is no such thing as 'post traumatic fibromyalgia', and that this pain condition merely reflects a constitutional susceptibility in the patient, and that any temporal coincidence with a

(compensable) trauma is merely coincidental. The industry has placed great reliance on a 2014 academic paper by Wolfe, Hauser et al 'Fibromyalgia and physical trauma' Journal of Rheumatology 12.08.14 to refute the notion of 'post traumatic fibromyalgia'.

HHJ Main QC set aside the time during this 5 day trial to address the medicine thoroughly, and to test the medical literature underpinning the Claimant's contention that disturbance of her REM sleep cycle over a prolonged period was the trigger for the fibromyalgia; she attributed the sleep disturbance to the PTSD pathology and soft tissue pain caused by the accident and, consequently, attributable to the accident. The Court accepted that scientific link (see § 79 and 144 i & j of the judgment) and found that the accident was the material trigger of the fibromyalgia. However, due to constitutional vulnerability to developing a similar pain disorder in any event, that included a history of childhood abuse, the Court found that within 6 years of the accident the Claimant probably would have succumbed to a similar set of symptoms. It awarded her £205,811.27 by way of damages inclusive of interest.

The Court rejected a full frontal attack on the Claimant's credibility by way of surveillance evidence and ancillary allegations of fraud. It reviewed in some detail the rules on pleading fraud relying in particular on the guidance of the House of Lords in Three Rivers v. Bank of England [2003] 2 AC 1@ 291 and found that the pleadings in this case, whilst pleading fraud clearly, were 'seriously defective' (§107) because they failed to plead with sufficient specificity the primary facts from which an inference of fraud could be drawn, save with regard to the Claimant's self report of previous accidents.

MT v. JCP & MIB 24.03.17

23.03.17

Barristers involved: Marcus Grant
Marcus Grant, instructed by Alexander Wormald of Clarkson, Wright & Jakes, represented a 17 year old pillion passenger on a motorcycle who sustained a severe brain injury in a road accident with an uninsured driver.

The Claimant, who was a Protected Party under the Mental Capacity Act 2005, was aged 27 at the date of settlement. The case was controversial because it was alleged that he had participated in an armed robbery using the stolen motorcycle shortly before the accident. A firearm was found at the accident scene. Notwithstanding an ex turpi causa defence, liability was apportioned 90%:10% in the Claimant's favour. An agreement was reached that provided for a combined lump sum / PPO settlement with the heads of care and case management and deputy costs paid on a periodical payment order basis. The settlement came for approval two days after the new –0.75% discount rate came into force. The Parties renegotiated the terms of the lump sum settlement following the Lord Chancellor's announcement, but opted to retain the PPO elements of the settlement. Fraser J approved the terms of the settlement, taking into account the interests of both the Claimant and the paying party (the MIB). He was satisfied that notwithstanding the reduction in the discount rate, a PPO for the two heads of claim identified was the appropriate mechanism to properly protect this Claimant's interests over the remaining estimated c. 50 years of his life (the brain injury had reduced his life expectancy) in the face of an uncertain future in the money markets due to the economic and political turmoil across the world. The total value of the settlement was between £3m and £4m, depending on future RPI and life expectancy. An anonymity order protecting the Claimant's identity was made.

Patterson v. Keegan 23.11.16

18.01.17

Barristers involved: Marcus Grant
44 year old IT Project Manager recovered £700,000 for the consequences of developing fibromyalgia after a road accident. Marcus Grant (instructed by Alex Cohen of Brian Barr Solicitors) appeared for the Claimant.

In March 2012 the Claimant sustained a soft tissue 'whiplash' injury to his spine in a rear-end shunting road accident. Two weeks after the accident he developed acute deterioration in his neck pain and attended a Minor Injuries Unit whereupon he was advised that he had suffered a fracture to his neck and his head was immobilised in a hard neck collar and he was not permitted to move for 36 hours; he suffered acute distress before a further x-ray excluded any bony injury. He developed anxiety symptoms in addition to pain and suffered disturbed sleep that caused a progressive decline in his health until, over the course of several months he developed diffuse widespread body pain that became progressively more disabling to the point of rendering him dependent on a wheel chair for mobilising outside the home. The wide spread pain condition was diagnosed as fibromyalgia. The Defendant commissioned evidence to suggest that the presentation was psychiatrically driven and was mediated by a

constitutional vulnerability rather than the consequences of the car accident.

The £700,000 settlement of his claim was the product of a negotiation between the Parties, weighing up the credibility, vulnerability and causation risks on the facts of the case.

P v. Grant – 19.12.16

19.12.16
20/12/2016

Barristers involved: Marcus Grant
34 year old Police Officer recovered £600,000 net of contributory negligence for the consequences of a brain injury sustained in a motorcycle accident. Marcus Grant (instructed by Nigel Mills of New Law Solicitors) appeared for the Claimant.

In September 2012 the Claimant, then a Sergeant in the Police Service, on his case sustained a closed head injury with suspected diffuse axonal injury and some bony injuries in a motorcycle accident when the Defendant began to turn across his path, changed his mind and stopped blocking part of the carriageway. The Defendant alleged tcontributory negligence against the Claimant for riding at 13.5 mph above the 50 mph speed limit, and for capsizing his motorcycle whilst braking. After the accident the Claimant received first rate rehabilitation through the Rehabilitation Code by reason of the proactive steps taken by the Defendant's Insurer, the Liverpool Victoria. The Claimant returned to modified duties four months post accident and passed his Inspector exams and secured successive postings as an Acting Inspector in non-front line jobs. He struggled and exhibited increasing signs of anxiety and fatigue as he attempted to cope with the cognitive demands of his work. Adjustments were made by his employer that included placing him on an 80% contract and ensuring that he did not work night shifts or on call so that he could regularise his sleep patterns. At the date of settlement, 4 years post-accident he was still in his adjusted duties role, but it remained uncertain whether he would be able to cope with it into the medium and long term. One of the issues between the Parties was the feasibility of him seeking a less pressurised role as a non-operational Sergeant which he was unwilling to countenance. Issues of mitigation of loss were raised by the Defendant in addition to challenging the diagnosis and prognosis provided by the Claimant's medico-legal team. The Defendant's battery of neurological experts sought to minimise the organic component of his persisting symptoms and considered that his condition would likely improve with the litigation settled and the current support structure of ongoing treatment with a neuropsychologist, clinical psychologist and neuropsychiatrist being 'diplomatically withdrawn'. The bulk of the settlement award comprised future loss of earning capacity.

The £600,000 net of the contributory negligence allegation was the product of a negotiation between the Parties, weighing up the credibility, vulnerability and causation risks on the facts of the case.

Aviva Insurance v. Steffen

(Unrep) 25.11.16
25.11.16

Barristers involved: Marcus Grant
Garnham J finds one count of contempt proved and two counts not proved. Marcus Grant (instructed by Laura Sales of Keoghs LLP) appeared for Aviva Insurance in committal proceedings in the Queen's Bench Division for contempt of court in respect of signing a statement of truth on one or more documents in County Court proceedings that Aviva asserted the Respondent knew to be untrue.

Aviva claimed that the named Respondent had lent his identity to front a claim when someone other than him was driving his car at the time of the accident; further that he advanced a claim for £1,026 in respect of 12 physiotherapy sessions he asserted he had received, substantiated by serving a discharge report from the physiotherapist who allegedly had treated him; Aviva asserted that he had not undergone the treatment and that the documents asserting otherwise were false. Finally, Aviva asserted that the Respondent advanced an account of the accident that he knew to be false in order to substantiate an unfounded claim for damages.

The Court found the first and third counts not proved. The Court rejected an purported Defence that the Defendant had not read the documents he signed but trusted his solicitors to ensure that they were accurate and true. The Court found that the Defendant had dishonestly signed a statement of truth on a Schedule of Loss claiming damages for physiotherapy charges that he had not incurred and had no intention of incurring. The Defendant was fined £1,000, payable in instalments and there was no order as to costs.

Wrobel et al v. Direct Line

(Unrep) 18.11.16

18.11.16

Barristers involved: Marcus Grant
Fraud established and exemplary damages recovered. Marcus Grant (instructed by Hamida Khatun of Keoghs LLP) appeared for Direct Line Insurance to resist three injury claims arising from an alleged road accident that generated 11 intimated injury claims from occupants in three vehicles.

The Defendant advanced a positive case of fraud relying on (1) engineering evidence that demonstrated that the Claimants' car was stationary when it sustained nearside damage which contradicted their alleged account of the mechanism of the accident, (2) numerous discrepancies between the various accounts of the 11 intimated claims and (3) an assertion that a document containing an alleged confession from the at fault driver was forged with the intention of perverting the course of justice. HHJ Boucher sitting in the Central London County Court accepted all three limbs of the Direct Line's case and made the finding of fraud, awarded exemplary damages of £2,000 against each Claimant and costs on the indemnity basis.

R v. K – 29.11.16

29.11.16

Barristers involved: Marcus Grant
31 year old Trainee Chef recovered £3,650,000 for the consequences of a spinal injury sustained in a cycling accident. Marcus Grant (instructed by Iona Smith of Gaby Hardwicke) appeared for the Claimant.

In April 2015 the Claimant sustained unstable fractures of the T12, L2 and L4 vertebrae causing a complete thoracic spinal cord injury. He spent much of the first year post accident in a spinal unit undergoing repeated surgeries to enable him to sit upright in a wheelchair. Reports were obtained at an early stage to address life expectancy, spinal, housing, care and equipment needs at an early stage. Consideration was given to a PPO but the Parties instead agreed on a lump sum settlement award in the above sum that reflected an allowance for contributory negligence risks raised by the Defendant, but without any expert evidence in response from the Defendant.

M v. EUI Limited – 23.11.16

23.11.16

Barristers involved: Marcus Grant
49 year old Conductor recovered £200,000 for the consequences of a whiplash injury that developed after a road accident. Marcus Grant (instructed by Darren Wilson of Irwin Mitchell) appeared for the Claimant.

In February 2012 the Claimant sustained a soft tissue 'whiplash' injury to his cervical spine in a low energy road accident. Despite several different forms of treatment he continued 4.5 years later to be left with pain across his right trapezius when holding a baton which prevented him from being able to cope with the physical demands of conducting to a high level, either in live performance or in a recording studio. Although he had no track record of having earned any significant sums from conducting at the time of the accident when he was aged 44, there was cogent evidence that he had a chance of becoming either a leading conductor of a high profile orchestra or from earning his living as a conductor who produced high profile concerts with established stars. It was accepted that the residual low level of symptoms was likely to be permanent and that it was possible that they might interfere with conducting at the highest level. The lion's share of the settlement represented a 'Smith v. Manchester' award for the lost chance of enjoying higher earnings as a principal conductor than engaged in a less physically demanding role in the music industry.

The £200,000 recovered by way of damages was the product of a negotiation between the Parties, weighing up the credibility, vulnerability and causation risks on the facts of the case.

Corrigan v. TEC Services & 2 Others – (CHRONIC PAIN) – 28.10.16

28.10.16 - Chronic Pain

Barristers involved: Marcus Grant
24 year old Construction Labourer recovered £300,000 for the consequences of a fractured toe and compartment syndrome in a workplace accident. Marcus Grant (instructed by Tracey Bennett of Slater & Gordon) appeared for the Claimant.

J v. B – 06.10.16 Chronic Pain

06.10.16

Barristers involved: Marcus Grant
32 year old Solicitor recovered £527,000 gross for the consequences of chronic pain disorder that developed after a road accident. Marcus Grant (instructed by Ardip Khalon of Irwin Mitchell) appeared for the Claimant.

In February 2011 the Claimant sustained a soft tissue 'whiplash' injury to her cervical and lumbar spine in a moderate energy rear end shunting road accident. She was unfit for work at the time of the accident, having taken c. 6 months off to cope with migraine headaches. There were a number of psycho-social stressors from her childhood and within her marriage at the time of the accident. After the accident her health declined rapidly as she became locked in a central sensitising pain disorder that was largely psychologically mediated. She was forced to abandon her career in the law and was only able to cope with part time tutoring at the time of settlement 5.5 years later. Her case was advanced on the basis that there was a 25% life time chance that she would have descended into an equivalent psychologically-mediated chronic pain disorder. The Defendant did not accept that case and asserted that the soft tissue injuries from the car accident were self limiting and incidental to the decline in her health that would have happened irrespective of any traumatic event. ore limited form of lupus and the onset of fibromyalgia pains.

The £527,000 recovered by way of damages was the product of a mediation between the Parties, weighing up the credibility, vulnerability and causation risks on the facts of the case, 6 weeks before trial.

ON v. Bullock – (Chronic Pain) – 13.09.16

13/09/2016

Barristers involved: Marcus Grant
30 year old Teacher with lupus recovered £200,000 for the consequences of fibromyalgia that developed after a road accident. Marcus Grant (instructed by Christopher Kardahji of Irwin Mitchell) appeared for the Claimant.

In October 2011 the Claimant sustained a soft tissue 'whiplash' injury to her cervical and lumbar spine in a high energy road accident. She needed to be cut from her car by the emergency services. Before the accident, on her case, she suffered from limited cutaneous lupus which was not diagnosed until 10 months after the accident. She continued to work full time as a teacher and suffered pain-induced sleep disturbance. Over the course of c. 6 months after the accident her pain became more diffuse and widespread and was accompanied by profound fatigue and cognitive impairment and headaches. Fibromyalgia was diagnosed at about the same time as the subcutaneous lupus. She was treated with medication for systemic lupus and the diagnosis 'SLE" appeared throughout her medical records even though her biomarkers for the condition were never confirmed.

Her fibromyalgia progressed and became moderately disabling forcing her to seek a non-teaching role that placed less strain on her limited stamina and pain tolerance reserves. She suffered no loss of earnings in the 4.75 years between the accident and settlement. On her case, her fibromyalgia was triggered by pain and anxiety-induced sleep disturbance from the accident. On the Defendant's case the fibromyalgia symptoms were probably part of an undifferentiated connective disease connected to the SLE diagnosis. The Defendant did not accept the more limited diagnosis of subcutaneous lupus was correct and did not accept that there was no causal nexus between that more limited form of lupus and the onset of fibromyalgia pains.

The £200,000 recovered by way of damages was the product of a negotiation between the Parties, weighing up the credibility, vulnerability and causation risks on the facts of the case, 3.5 weeks before trial.

Khokar v. Jethwa – (Fraud) – 02.09.16

05/09/2016

Barristers involved: Marcus Grant
Appeal based on perversity and insufficient reasons succeeds in slam on fraud case. Marcus Grant (instructed by Hamida Khatun of Keoghs LLP) appeared for the Appellant.

The Defendant appealed a decision of DJ White in an alleged slam on case. The Defendant pleaded a detailed fraud Defence in a suspected slam-on case that included allegations of bogus passenger claims, a suspicious claims history and inconsistencies between the pleaded case and that intimated in the Claim Notification Forms from the three alleged occupants in the Claimant's car. The Claimant turned up at trial with an interpreter, having given no prior indication that he had not read or understood the seven documents appended with his statement of truth. The Court permitted him time to have each document translated to him by the interpreter before the trial commenced. In a short ex tempore judgment the Judge indicated that he was not satisfied that the collision was a staged accident because there was insufficient evidence of any conspiracy between the claimant and the alleged decoy car driver. In summary the Judge stated that he preferred the Claimant's evidence to that of the Defendant whom he found gave his evidence in a didactic way.

HHJ Clark, sitting in Luton, allowed the appeal finding that it was unclear to her from the reasoning of the judgment why the Defendant had lost. The DJ had failed to address the critical evidential issues in the Defendant's case and make findings on them, before concluding that he preferred the Claimant's evidence to the Defendant's evidence. In the context of a clear pleading of fraud, properly put to the Claimant in cross-examination, the Court could not duck making findings on the critical issues, and could not make findings on burdens of proof until sufficient findings on those issues had been made.

Appeal allowed. Matter to be reheard by a different Judge.

Strawbridge v. Hatfield Colliery – (Chronic Pain) – 26.08.16

26/08/2016

Barristers involved: Marcus Grant
51 year old Mining Engineer recovered £200,000 (gross of contributory negligence) for the consequences of fibromyalgia that developed two years after a workplace accident. Marcus Grant (instructed by Phillip Cohen of Brian Barr Solicitors) appeared for the Claimant.

In November 2011 the Claimant fell and sustained a soft tissue 'whiplash' injury to his cervical spine when he stepped onto a moving belt and lost his balance. Liability was compromised 85% in his favour. On his case he continued to experience neck pain that became more intrusive 9 weeks after the accident after playing some cricket. He continued working in heavy manual work in a hot work environment, suppressing the pain with painkillers. 11 months post accident the neck pain provoked referred symptoms down his left arm. MRI scans revealed some age related degenerative changes and two bulging cervical discs, neither sufficient to warrant neurosurgery. He continued to work through the pain, spending a lot on chiropractic treatment and some pain relieving injections. The pain disturbed his deep REM sleep patterns. At about the second anniversary of the accident he developed more widespread pain with associated fatigue, headaches and cognitive impairment, diagnosed by his treating and medico-legal rheumatologists as Fibromyalgia. He struggled on at work until the third anniversary of the accident and then was physically unable to continue working. He was made redundant at the age of 50 when the coal mine in which he worked (the last operating coal mine in Yorkshire) was closed down. He struggled to find sustainable employment thereafter.

The Defendant challenged the Claimant's assertion that there was a continuum of pain after the accident. It noted the absence of documented neck pain before he played cricket 9 weeks post-accident. It contended that the neck pain was probably constitutional in origin attributable to age related degenerative changes and the postural and physical demands of his manual career. Further it contended that the alleged nexus between the neck pain-induced sleep disturbance and the emergence of the widespread pain symptoms was speculative and unsupported by medical literature. The diagnosis of Fibromyalgia was rejected by the Defendant who considered the cluster of subjective symptoms, if genuine, was probably psychologically mediated, preferring a diagnosis of Somatic Symptom Disorder for which the prognosis with appropriate CBT would be optimistic.

The £200,000 gross of 15% contributory negligence recovered by way of damages was the product of a negotiation between the Parties, weighing up the credibility, vulnerability and causation risks on the facts of the case.

Limbu v. Davidson – (Brain Injury) – 24.08.16

25/08/2016

Barristers involved: Marcus Grant
82 year old retired Ghurka recovered £305,000 for the consequences of developing dementia following a running down accident. Marcus Grant (instructed by Nick Godwin of Slater & Gordon Solicitors) appeared for the Claimant.

The Claimant sustained a 'left periorbital haematoma' and a technically 'mild' brain injury, sufficient to damage the veins across the surface of the brain when struck by a motorcycle at the age of 79 in 2013. By reason of his age and limited brain reserve he suffered a poor outcome from the head injury and began to dement to the extent that by the 3rd anniversary of the accident he needed a 24 hour presence in the home of a family member to monitor him. The bulk of this monitoring pre-settlement was provided by wife. The issues in the case were whether or not the dementia was attributable to the accident or was attributable to constitutional vulnerability or a combination of the two, life expectancy and the extent to which his need to be supervised and/or cared for should properly be met by an external professional case management / support worker team, and what extent it should be provided for gratuitously. The case was compromised through negotiation and the compromise approved by Master Eastman, it being accepted between the Parties that the Claimant was a Protected Party and a Protected Beneficiary within the meaning of the Mental Capacity Act 2005.

Friis v. Horridge – (Chronic Pain) – 08.08.16

08/08/2016

Barristers involved: Marcus Grant
48 year old part time Care Worker and Masters Student recovers £145,000 for the consequences of fibromyalgia that developed following a road accident – instructed by Phillip Cohen of Brian Barr Solicitors.

F v. T – (Chronic Pain) – 02.08.16

[ICD 10 – F44.7]
02/08/2016

Barristers involved: Marcus Grant
55 year old unemployed lady recovers £385,500 for a Mixed Dissociative Conversion Disorder and vestibular damage suffered in a lift accident – instructed by Daniel Denton of Slater & Gordon Solicitors.

UK Insurance v. Gentry – (Fraud) – 15.07.16

18/07/2016

Barristers involved: Marcus Grant
HHJ Simpkiss sitting as a Judge of the QBD gave permission to commence committal proceedings against Mr Gentry following the Court of Appeal decision in Gentry v. Miller & UKI Limited [2016] EWCA Civ 141 – instructed by Hamida Khatun of Keoghs LLP

C v. F – (Chronic Pain) – 14.07.16

14/07/2016

Barristers involved: Marcus Grant

Unemployed man settles his crush injury for £539,000 – instructed by Richard Foyster of Ashtons Legal

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High Court approves settlement of brain injury claim with “stop start” provision for Court of Protection costs – (Brain Injury) – 21.06.16

30/06/2016

Barristers involved: Marcus Grant Alex Glassbrook
Claim by a middle aged man who sustained a severe traumatic brain injury in a running down accident.

Claimant found to lack capacity to litigate or manage affairs and Deputy appointed by Court of Protection. However, agreed between parties that Claimant’s future capacity might fluctuate, so leading to possible cessation of Court of Protection costs and even subsequent resumption at as yet unknown times.

Judgment of Mrs Justice Swift in AA -v- CC and the MIB [2013] EWHC 3679 applied to provide for future medical examinations going to capacity and thereby a “stop-start” device for the Court of Protection charges, set out in Schedule to Tomlin Order.

Swift J had ruled in AA v CC that Court could not have ordered such device against wishes of the parties, but that it could approve such device if agreed between the parties.

Dingemans J approved the Tomlin Order. Also made anonymity order, applying JXMX v. Dartford and Gravesham NHS Trust [2015] EWCA Civ 96.

Direct Line v. Akramzadeh & 29 Others, (Unrep) – (Fraud) – 15.06.16

16/06/2016

Barristers involved: Marcus Grant
Marcus Grant (instructed by Gemma Wilkinson of Keoghs LLP) appeared for Direct Line Insurance in a tort of deceit action against 29 Defendants, all of whom had intimated or facilitated claims arising from nine separate fictitious accidents in an attempt to defraud the insurer.

Each Defendant used one of the accident management companies linked to one or more of the addresses: 44-46 Victoria Road, EN4 9PF, 162B Ballards Lane, N2 8EN and 41 Leicester Road, EN5 5EW namely: (Accident Claims Experts, B&T Recovery Limited, Celebrity Car Hire, UK Crystal Car Hire). The 29th Defendant was a Director of Accident Claims Experts.

Direct Line paid out some damages to three of the Defendants which it reclaimed, it expended money investigating the claims and sought recovery by way of damages for its in-house overhead costs in doing so. It also claimed an award of exemplary damages to punish the Defendants and to act as a deterrent to other prospective fraudsters considering involving themselves in a crash for cash scam. The Court acceded to all three heads of claim.

The claim for exemplary damages was unusual because it is an exceptional order that is out of the norm in tort claims. The Court was satisfied that the tort of deceit was proven in each of the cases, that the facts satisfied the second limb of Lord Devlin’s threshold test for recovery of exemplary damages in Rookes v. Barnard [1964] AC 1129 (namely: ‘where the defendant’s conduct has been calculated to make a profit for himself’) and Lord Nicholl’s test in Kuddus v. Chief Constable of Leicestershire [2002] 2 AC 122 (namely: ‘conduct which was an outrageous disregard to the Claimant’s rights’). The Court considered that an award of exemplary damages of £2,500 per Defendant (one Defendant participated in two of the fictitious accidents), equivalent to the sum that each might spend on a second hand car, was an appropriate level to create a deterrent. In addition to awarding the other heads of damages claimed, the Court also awarded the Claimant c. £82,000 of costs on an indemnity basis.

Direct Line v. Akramzadeh & 29 Others. A copy of the Judgment will soon become available on Lawtel.

Aviva Insurance v. Steffen, (Unrep) – (Fraud) – 18.05.16

19/05/2016

Barristers involved: Marcus Grant
Contempt of Court permission hearing before Mr Justice Garnham. Permission to commence committal proceedings against an injury claimant granted – instructed by Laura Hardiman of Keoghs LLP

Saat & Khiveh v. Tesco Insurance – (Fraud) – 20.04.16

21/04/2016

Barristers involved: Marcus Grant
Fraud cases using SFE before HHJ Boucher resulting in a referral of the case to the DPP – instructed by Hannah Lowe of Keoghs LLP

Mochol v. Darby – (Brain Injury) – 24.03.16

24/03/2016

Barristers involved: Marcus Grant
Polish Warehouse worker settles his head injury claim for £400,000 – instructed by Laura Harper of Thompsons

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Knowles v. Duckworth-Chad – (Chronic Pain) – 14.03.16

14/03/2016

Barristers involved: Marcus Grant
31-year-old student settles chronic pain case for £260,000 – instructed by Colin Cook of Hatch Brenner

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Burik v. Photo Box Ltd – (Chronic Pain) – 11.03.16

11/03/2016

Barristers involved: Marcus Grant
A 36-year-old Warehouse Picker settles her CRPS claim for £450,000 – instructed by Sofie Toft of Irwin Mitchell Solicitors

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Taylor v. ARK AVTS Limited – (Chronic Pain) – 03.03.16

02/03/2016

Barristers involved: Marcus Grant
A 42-year-old Account Manager settles his fibromyalgia claim for £494,000 – instructed by Phillip Cohen of Brian Barr Solicitors

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White v. Burial – (Brain Injury) – 25.02.16

25/02/2016

Barristers involved: Marcus Grant
18-year-old Model settles her subtle head injury claim for £348,000, less 25% contributory negligence – instructed by Tom Ranson

of Ashton KCJ

Fertek v. Peker v. Aviva Insurance UK – (Fraud) – 12.02.16

CA - Lawtel
12/02/2016

Barristers involved: Marcus Grant
Court of Appeal dismissed Claimants appeal against a finding of fraud. Instructed by Ruth Needham of Keoghs LLP.

Churchill Insurance Company –v- Dunn – (Fraud) Lawtel – 14.01.16

10/12/2015

Barristers involved: Marcus Grant
Committal case for contempt of Court before His Honour Judge Wood QC sitting as a Judge of the QBD in Liverpool who found the four Defendants guilty of contempt.

R v G – (Brain Injury) – 20.10.15

20/10/2015

Barristers involved: Jonathan Watt-Pringle QC Marcus Grant
Jonathan Watt-Pringle QC and Marcus Grant represented the Claimant in a claim arising out of a low speed bicycle accident. The Claimant, then a 49-year-old Company Director, fell off his bicycle and struck his head on the road. He suffered no PTA but presented with a cluster of subtle neuro-cognitive, neuro-behavioural and neuro-psychological symptoms. A Telsa 3T MRI brain scan was normal, apart from evidence of a small haemosiderin deposit in the tentorium adjacent to the temporal lobe. There was no evidence of any macroscopic diffuse axonal injury to the white matter. He sustained partial shearing of his olfactory bulb and presented with very subtle patterns on neuro-psychological testing.

His claim was valued by reference to a reduction in the gross profit margin achieved by his business after the accident, attributable to his ‘loss of edge’ affecting his ability to optimise the margin between the purchase and selling cost of his company’s product. The case settled through negotiation for £3,000,000 (£3.529,000 less 15% in respect of contributory negligence).

Kashif v. Simpson – (Chronic Pain)

Lawtel (Quantum) – Mrs recorder Knapton
04/02/2015

Barristers involved: Marcus Grant
Chronic pain claimant awarded £791,000 after a 3 day trial in the Bradford County Court

Marcus Grant (instructed By Tom Ranson of Ashton KCJ) appeared for the Claimant in an action arising out of a whiplash injury arising from a low speed car accident in a car park. The Claimant, then a 39-year-old Accounts Manager, suffered a Whiplash Associated Disorder compounded by a substantial ‘psycho-social’ response to the pain-induced lifestyle changes that had been forced upon him. He went on to develop an Adjustment Disorder with mixed anxiety and depression that had served to perpetuate his perception of his pain and create a ‘vicious stress and pain cycle’. The Court accepted his evidence supported by expert evidence from a spinal surgeon and a clinical psychologist that his chronic pain condition was attributable to the accident. The Defendant’s positive case that the Claimant was not telling the truth and was exaggerating his description of his symptoms, or alternatively that his symptoms were attributable to an unrelated psychiatrically mediated somatic symptom disorder were rejected. The findings were set out in a reserved judgment of Mrs Recorder Knapton.

Siegel v. Pummell – (Brain Injury)

[2014] EWHC 3409 – Wilkie J
18/12/2014

Barristers involved: Marcus Grant
Subtle brain injury claimant awarded £1.59m after a 9 day trial in the QBD
18 December 2014

Marcus Grant (instructed By Christopher Dickinson of Dickinson Solicitors) appeared for the Claimant in an action arising out of a whiplash injury arising from a rear end shunting accident at c. 20 mph in which the Claimant, then a 39-year-old Information Technology Enterprise Architect, suffered diffuse axonal injury ["DAI"] at a microscopic level not capable of verification on MRI or CT scanning. He struggled on working without suffering any loss of earnings until 4½ years post-accident. The trial focused on the medical evidence. The Defendant contended that there was no DAI and that the claim was worth no more than £5,000 in respect of minor soft tissue damage to the neck. He attributed the Claimant's presentation of cognitive, behavioural and physical symptoms consistent with brain injury were in fact attributable to the Claimant's pre-accident personality and alleged vulnerability to anxiety, and was unrelated to the consequences of the index accident. The Court rejected the Defendant's case and found that the methodology applied by the Claimant's medico-legal expert team and employment consultant was sound and preferable. The judgment delivered by Mr. Justice Wilkie marshaled the medical arguments in some detail and provides useful guidance to the profession on the medicine arising at the interface between neurology and psychology.

The Judgment can be found on Lawtel and Bailii: Siegel v. Pummel

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Zurich Insurance v. Kay, Kay & Kay – (Fraud)

[2014] EWHC 2734 (QB) – Turner J
01/08/2014

Barristers involved: Marcus Grant
Committal Action in the Manchester District Registry

Marcus Grant (instructed By Will Quinn of Weightmans) appeared for the Claimant in an action arising out of an alleged dishonest injury claim. Whilst the Court found that the case failed to satisfy the civil threshold it could not be satisfied that contempt of Court had been proven beyond reasonable doubt and the committal order was not made.

Liverpool Victoria v. Thumber – (Fraud)

[2014] EWHC 3051 (QB) Bean J
15/07/2014

Barristers involved: Marcus Grant
Dishonest injury litigant committed to prison for contempt of Court

Marcus Grant (instructed By Gareth Berry of Keoghs LLP) appeared for the Liverpool Victoria Insurance Company in a committal action in the Queen's Bench Division for contempt of court in respect of signing a statement of truth on one or more documents in County Court proceedings that he knew to be untrue in such a way as likely to interfere with the course of justice. Mr. Thumber failed to attend the committal hearing, instead sending his brother to Court with a doctor's certificate diagnosing depression. Mr. Thumber, represented below by Armstrong's Solicitors in Liverpool brought a claim for £130,000 in credit hire charges after his Audi, worth c. £6,500, was allegedly written off as a result of Liverpool Victoria's Insured driver. Liverpool Victoria defeated his claim below relying on forensic engineering evidence demonstrating damage inconsistency between the vehicles allegedly involved in the collision and also relied on database evidence to demonstrate a link between the alleged drivers. Mr. Thumber discontinued his claim on 1 May 2013 after his Counsel had opened the case. Liverpool Victoria sought, and obtained permission to bring committal proceedings. Mr. Justice Bean considered the committal papers and found that the original alleged accident was 'contrived' and that the Claimant was attempting to obtain pecuniary advantage through perjured evidence. The Court found the contempt proved in Mr. Thumber's absence, and sentenced him to 12 months in prison. He was subsequently arrested in Wolverhampton and imprisoned in Pentonville.

The Azimi Group Litigation – (Fraud)

Lawtel - 8 WLUK 243 – HHJ Mitchell
13/02/2014

Barristers involved: Marcus Grant James Laughland Charles Curtis
Orchestrated slam-on staged accidents "swindle" exposed.

Marcus Grant, instructed by Keoghs LLP (Fiona Snow and her Team), acted for the Defendants and their Insurers in five cases heard consecutively over 12 days before His Honour Judge Mitchell, the Designated Civil Judge at Central London County Court. In each case the Claimant claimed that he or she had braked in reaction to the sudden and erratic manoeuvre of a car ahead. In contrast, the Defendant drivers (all driving commercial vehicles) claimed that the Claimant had braked with wholly inappropriate force and with the deliberate intent of causing a collision to occur, acting in collusion with a decoy vehicle. The Judge found that each of these 8 collisions had been deliberately induced. In three of the cases he also found that the Claimant and / or the Claimant's alleged passengers had not even been present at the time of the collision. Use was also made of similar fact evidence showing how many claims passing through the same accident management company had been abandoned. The Judge concluded his judgment by stating in unequivocal terms that the message must get out to the public that if they engage in such a "swindle" then they face the risk of contempt proceedings and a sentence of immediate imprisonment, even if of previous good character. All the cases were dismissed with orders for indemnity costs and substantial interim payments on account of costs.

This was a ground-breaking case in that it was the first time that a Court has been invited to consider similar fact evidence from conjoined cases when considering alleged deliberately induced car crashes, colloquially known as 'slam-on collisions'. This type of fraud is considered by motor insurers to be endemic across the country. The similar fact evidence was critical in enabling the Court to discern recurring themes of the modus operandi of the fraudsters.

Liverpool Victoria v. Singh – (Fraud)

Lawtel 30.05.13 – HHJ Robinson QC
30/05/2013

Barristers involved: Marcus Grant
Dishonest injury litigant committed to prison for contempt of Court

Marcus Grant (instructed By Craig Glover of Keoghs LLP) appeared for the Liverpool Victoria Insurance Company in a committal action in the High Court in Sheffield for contempt of court in respect of signing a statement of truth on one or more documents that the signatories knew to be untrue in such a way as likely to interfere with the course of justice. Mr. Singh was jailed for eight months after admitting he lied in court following a 'crash for cash' car accident that fraud investigators from Keoghs, later proved never actually took place. Mr. Singh, aged 47, from Doncaster, originally told his insurers that, together with two passengers, the car he was driving was involved in a collision with one driven by Latvian, Mr Didzus. Mr Didzus, aged 35, from Rotherham, claimed he had three passengers in his car at the time of the alleged accident in January 2010. The total amount insurers would have been obliged to pay-out for the claim was in excess of £120,000 including medical treatment for the two drivers and five fictitious passengers for personal injuries, car repairs, credit hire and storage, and all third party legal costs. Mr Singh's claim was dismissed in court on 18 September 2012 and LV= began proceedings against Mr Singh for contempt of court, to which Mr Singh pleaded guilty. On Wednesday 19 December, Mr Singh was sentenced to eight months in prison at Sheffield County Court. Judge Robinson commented that: "Those tempted to make fraudulent claims from fictitious accidents should take heed. False claims take up valuable court time that could be better spent resolving genuine disputes. Fraud costs the insurance industry an eye-watering £2 billion pounds each year and honest motorists would also agree that money could be better spent."

Samson v. Ali [2012] – (Chronic Pain)

[2012] EWHC 4146 – Stadlen J
21/11/2012

Barristers involved: Marcus Grant
Claimant permitted to rely on evidence to challenge fairness of surveillance footage

Marcus Grant, led by Andrew Ritchie QC, and instructed by Keith Barrett, appeared for a Claimant seeking an Order from Stadlan J

to rely on quasi-expert evidence to challenge the fairness of surveillance evidence.. The Defendant's insurers admitted liability and served video evidence purporting to undermine the Claimant's asserted injuries. The Claimant's solicitor obtained expert counter surveillance evidence which analysed the video and asserted that vital video evidence was omitted or withheld and that the video tape was "speeded up" by the Defendant's surveillance operatives. The insurers sought to debar the Claimant from relying on the evidence. Mr Justice Stadlen granted permission to call the evidence at trial.

Thomas v. Barker (Unrep) – (Chronic Pain)

(Unrep) 01.05.12 – Recorder Hill Smith
01/05/2012

Barristers involved: Marcus Grant
Injured Claimant exonerated of spectacular dishonesty allegation and awarded £169,000 and all his costs after a 10 day trial

Marcus Grant (instructed By Robert Gair of Ashton KCJ) appeared for the Claimant in a hotly contested injury case arising out of a car accident. The Claimant, who complained of multiple injuries, was covertly filmed by the Defendants skiing in Austria and subsequently denied that he had skied when asked by one of the Defendants' medical experts. The Defendants accused him of being dishonest and contended that the Court should reject all but c. £2,500 of his claim on the ground that his dishonesty contaminated all the medical evidence to its core and the claim should fail on the burden of proof. Eight medical experts were called at trial to address the competing and overlapping medical disciplines engaged by the medicine in the case. The Claimant admitted that he lied to the Defendants' medical expert about skiing. The Court found that he had been honest and reliable in his self-report of symptoms since the accident and found that they were attributable to the accident, subject to an 8-year acceleration of low back pain. He was awarded 85% of the bottom line of his Schedule of Loss and 100% of his costs. A 44-page judgment was handed down by Recorder Hill Smith after 10 days of the trial in Cambridge.

Mann v. Bahri – (Brain Injury)

[2012] Lawtel 02.04.12 HHJ Burke QC
02/04/2012

Barristers involved: Marcus Grant
Young Claimant awarded £259,000 in respect of a subtle brain injury
12 March 2012

Marcus Grant (instructed By Christopher Dickinson of Dickinson LLP) appeared for the Claimant in a hotly contested head injury case arising out of a car accident in March 2003. The Claimant, who was an 18-year-old A' level student at the time of the accident, began the trial as a witness whose credibility was compromised by admitted untruths that he had told. Notwithstanding this, he presented with a cluster of frontal lobe symptoms including disinhibition, poor temper control and aggression, impatience, impulsivity, fatigue, difficulties in concentration, memory and organisation, in sequencing and planning and in multi-tasking, slowness of mind and attention and intolerance for alcohol. Despite there being no radiological or neuro-psychological evidence to validate the presence of such symptoms, the Court was satisfied by reason of the sound methodology of his expert witnesses that he had in fact suffered cerebral injury to the frontal lobe. He was awarded £48,500 in respect of general damages. His main head of claim was for future loss of earning capacity which was quantified on a loss of chance basis using the additional claim model advocated in Langford v Hebran [2001] EWCA Civ 361, [2001] P.I.Q.R. Q13. A 94-page judgment was handed down by HHJ Burke QC after 9 days of evidence.

Thompson & Fortis insurance v. Middleton – (Chronic Pain)

[2012] EWCA Civ 231
01/03/2012

Barristers involved: Marcus Grant
Court of Appeal upholds a chronic pain judgment for a Claimant of £461,000

Nigel Wilkinson QC and Marcus Grant (instructed by Tom Ranson of Ashton KCJ) appeared for the Claimant resisting an appeal brought by Fortis Insurance and its Insured against an Order of HHJ Reddihough that awarded the Claimant substantial damages following an objectively modest trauma. The Defendants sought to persuade the Court of Appeal that the Judge's findings were

perverse; that had he understood the medical evidence properly he would have been compelled to reject the Claimant's case. The Defendants failed in all 17 of their grounds of appeal. A finding was made that the Judge had understood the medical evidence correctly, made clear findings that he was entitled to make, giving full and detailed reasons that left the Defendants in no doubt as to why he had found them. Dame Janet Smith DBE gave the lead judgment with which Rafferty LJ and Mann J concurred.

Liverpool Victoria v. Bashir & Others – (Fraud)

[2012] EWHC 895 (Admin) Sir John Thomas, Silber J
28/02/2012

Barristers involved: Marcus Grant
Dishonest injury litigant committed to prison for contempt of Court

Marcus Grant (instructed By Greg Lloyd of Clyde & Co) appeared for the Liverpool Victoria Insurance Company in a committal action in the Divisional Court for contempt of court in respect of signing a statement of truth on one or more documents that the signatories knew to be untrue in such a way as likely to interfere with the course of justice. This was the first contrive collision claim to come up from the County Court on a committal application. The first four Defendant's gave Queen's Evidence explaining how they had been lured into the fraud, what they were paid, how they were asked to use a crib sheet and gave the Court a detailed insight into the way that such claims are run. Notwithstanding the fact that the Defendants were 'mere foot soldiers' in a wider conspiracy, and despite the fact that the wife was still breast feeding a 4 month old child, the younger two Defendants were imprisoned for 6 weeks; the elder two defendants, both in their 70's and in poor health were given suspended sentences. Thomas LJ and Silber J delivered a judgment explaining the sentence.

Nield & Acromas v. Loveday & Loveday – (Fraud)

[2011] EWHC 2324 (Admin)
13/11/2011

Barristers involved: Marcus Grant
Dishonest injury litigant committed to prison for contempt of Court

Marcus Grant appeared for the Insurer in the first contested committal action in the Divisional Court for contempt of court in respect of signing a statement of truth on one or more documents that the signatories knew to be untrue in such a way as likely to interfere with the course of justice in a County Court. Mr. Loveday brought an exaggerated claim for damages. The exaggeration was dishonest. His wife supported his dishonest claim. Acromas Insurance proved the dishonesty to the criminal standard of proof against Mr. Loveday in a 2-day contested committal action. Mrs. Loveday admitted the contempt. Mr. Loveday was sentenced to 9 months imprisonment and was taken to Pentonville Prison at the conclusion of the trial. Mrs. Loveday was given a 6 month sentence, suspended for 18 months. Both were ordered to pay Acromas' costs of bringing the committal action. Sir Anthony May and Mr. Justice Keith delivered a detailed judgment that provides guidance for the profession in this emerging area of jurisprudence.

Lane v. Shah – (Fraud)

[2012] ACD 1 (Admin)
05/10/2011

Barristers involved: Marcus Grant
Dishonest injury litigant committed to prison for contempt of Court

Marcus Grant (instructed By Neil Southern of Keoghs LLP) appeared for the Liverpool Victoria Insurance Company and its insured in a committal action in the Divisional Court for contempt of court in respect of signing a statement of truth on one or more documents that the signatories knew to be untrue in such a way as likely to interfere with the course of justice. Mrs. Shah was an accountant who brought an exaggerated claim for damages in excess of £600,000. The exaggeration was dishonest. Her husband and 22-year-old daughter supported her dishonest claim. The Shah family admitted the contempt. Mrs. Shah was sentenced to 6 months imprisonment and her husband and daughter were each sentenced to 3 months in prison. They were also ordered to pay the costs of bringing the committal action. Laws LJ and Simon J delivered a judgment explaining the sentence.

South Wales Fire & Rescue v. Smith – (Fraud)

[2011] EWHC 1749 (Admin)
07/07/2011

Barristers involved: Marcus Grant
Dishonest injury litigant receives suspended prison sentence for contempt of Court

Marcus Grant appeared for a Public Body in the first committal action in the Divisional Court for contempt of court in respect of signing a statement of truth on one or more documents that the signatories knew to be untrue in such a way as likely to interfere with the course of justice in a County Court. Mr. Smith failed to disclose that he was working part time as a taxi driver for a period when he was claiming loss of earnings because of injury from the South Wales Fire & Rescue. Moses LJ provided guidance to the profession that normally: “Those who make such false claims if caught should expect to go to prison. There is no other way to underline the gravity of the conduct”. In Mr. Smith’s case an exception was made because there was a 3-year delay between his contempt and bringing the matter to a final conclusion. Also he admitted his contempt. He was given a 12 month prison sentence, suspended for 2 years.

Vaile v. London Borough of Havering – (Brain Injury)

[2011] EWCA Civ 246
01/03/2011

Barristers involved: Andrew Prynne QC Marcus Grant
Court of Appeal judgment on breach of duty and causation appeal in assault case

Andrew Prynne QC and Marcus Grant appeared for the Appellant, a special needs teacher assaulted by a 14-year-old pupil on the ASD spectrum. The Respondent, through its headmaster, engaged in a cover-up by fabricating documentary evidence and giving perjured oral evidence in Court, in an attempt to protect itself from criticism that it had not devised and maintained a safe system of work for the Appellant. The Court of Appeal described this conduct as ‘reprehensible’. The Court below found that despite the cover-up, the Claimant failed to establish either a breach of duty or causation. The Court of Appeal overturned both findings. It found that on the Judge’s own primary factual findings there had been a breach of duty. Furthermore, whilst it was difficult for the Claimant to show precisely what the school should have done to avoid the assault, such difficulty did not automatically mean that her claim should fail. There was sufficient evidence to establish on a balance of probability, that but for the multiple breaches in the Respondent’s duty of care to her, she would not have sustained injuries in the assault. Costs of the liability trial were awarded on the indemnity basis.

Masood v. Kerr & Pal Ker – (Chronic Pain)

[2010] EWCA Civ 1347
02/12/2010

Barristers involved: Marcus Grant
Court of Appeal judgment on CFS appeal

Marcus Grant appeared for the Respondents in a CFS claim for c. £295,000 brought by the Appellant following an accident in December 2001. HHJ Knight QC rejected the Appellant’s claim at first instance that the car accident had caused the onset of the CFS. Instead he found that the CFS pre-dated the accident which had resulted in a short lived neck injury and a mild exacerbation in the CFS condition. The Appellant appealed and the Court of Appeal dismissed the appeal upholding the judgment below for the reasons given by the Judge.

Barnes v. Seabrooke et al – (Fraud)

[2010] EWHC 1849 (Admin)
26/07/2010

Barristers involved: Marcus Grant

Divisional Court Judgment on committal proceedings

Marcus Grant appeared for one of the Applicants seeking guidance from the Divisional Court on the procedural steps and evidential thresholds required to be satisfied by insurers in bringing committal proceedings against dishonest litigants who verify documents with statements of truth knowing that their content is untrue in a material way. This judgment should remove much of the mystique about the quasi civil quasi criminal jurisdiction and provide much needed guidance to the profession.

Clarke v. Maltby – (Brain Injury)

[2010] EWHC Civ 1201 (QB) – Owen J
23/06/2010

Barristers involved: Marcus Grant
Substantial Award of Damages for Claimant with Subtle Brain Injury

Marcus Grant acted for the Claimant who sustained a subtle brain injury in a road traffic acciden in the case Clarke v Maltby (High Court, Owen J). Prior to the accident, the Claimant was a solicitor in private practice specialising in banking related transactions. The central issue before the Court was the extent to which the brain injury had affected her capacity to function as a solicitor specialising in this practice area. The Claimant contended that she suffered a range of problems including mental fatigue, cognitive dysfunction, disinhibition, temper, impaired memory and concentration symptoms and compromised and inappropriate speech and word finding. The Defendant contended that the extent of the Claimant's symptoms was exaggerated. Mr. Justice Owen found that the Claimant's continuing symptoms were obvious and genuine and the evidence compelled the conclusion that the Claimant would not be able to sustain the required performance as a solicitor undertaking transactional work. The Claimant was awarded damages in excess of £950,000, including over £750,000 for future loss of earnings.

Williams v. Jervis – (Brain Injury)

[2008] EWHC Civ 2346 (QB) – Evans J
08/10/2008

Barristers involved: Marcus Grant
What appeared to be a minor impact in a road traffic accident had been sufficient to cause the claimant subtle brain injuries resulting in impaired cognitive function. The evidence of the defendant's expert witness that she had exaggerated her symptoms was discredited and the claimant's evidence about the nature and extent of her symptoms was accepted.

Publications

TGC Clinical Negligence Newsletter – Second Issue

16/11/2021

Authors: Lionel Stride Marcus Grant Ellen Robertson James Arney QC James Laughland Robert Riddell Nicholas Dobbs Rochelle Powell Anthony Johnson James Yapp
Please see link below to the latest edition of the TGC Clinical Negligence Newsletter.
You can view the publication on our website http://tgchambers.com

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Cloud Recording – TGC Webinar – Guidance on the recording of medico-legal appointments is now available

28/05/2020

Authors: Marcus Grant
In the recent case of Macdonald (By His Litigation Friend, Lindsay Macdonald) v Burton Martin Spencer J acknowledged that there was a need to record expert appointments in some higher value cases to protect litigants (mainly claimants) against experts who are 'incompetent or worse'. This case followed on from the decision in Mustard v Flower, Marcus Grant acted in both cases on behalf of the Claimant. The cloud recording is now available. Topic: TGC Webinar - Guidance on the recording of medico-legal appointments. Date: May 28, 2020 03:52 PM London Viewers can share the recording using the link below and the following

password: 8P.9GN9B
You can view the publication at
https://tgchambers.zoom.us/rec/share/-5dIbOvwqGNOU6PN40HuYYcEJYvEX6a8hChPr6dZmk6Q8QHrNL8jN4UqnTGZ9BoI

TGC Fraud Newsletter Issue VII – February 2018
21/02/2018

Authors: James Laughland James Henry Marcus Grant Tim Sharpe Ellen Robertson George Davies
Please see link below for Issue 7 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

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TGC Fraud Update v3 – June 2016
22/06/2016

Authors: Marcus Grant George Davies Tim Sharpe Anthony Johnson David R. White James Henry Anthony Lenanton Piers Taylor Matthew Waszak
Stemming the tide of the fraud. Please see link below for the third edition 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

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TGC Fraud Update February 2016
03/02/2016

Authors: Charles Curtis Marcus Grant Edward Hutchin George Davies Tim Sharpe Anthony Johnson James Henry Richard Boyle Matthew Waszak
Facing up to the challenge of fraud rings. Please see link below for the second edition of TGC Fraud Update, a publication which was set up with the stated aim of facilitating the sharing of information about decided claims involving issues of road traffic fraud and related matters. Thank you also for all of the kind words and helpful feedback received about the inaugural edition.
You can view the publication on our website http://tgchambers.com

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TGC Fraud Update
09/10/2015

Authors: Marcus Grant Alex Glassbrook Tim Sharpe Anthony Johnson James Henry Emily Wilsdon
Welcome to the inaugural edition of TGC Fraud Update, a new publication from the fraud team at Temple Garden Chambers containing a number of articles on legal matters relevant to insurance fraud practitioners and a digest of recent noteworthy cases in which Members of Chambers have been involved.
You can view the publication on our website http://tgchambers.com

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News

TGC Clinical Negligence Newsletter – Issue 3, May 2022.
03/05/2022

Barristers involved: Lionel Stride Dominic Adamson QC James Arney QC James Laughland Marcus Grant Emma-Jane Hobbs Anthony Johnson Richard Boyle James Yapp Rochelle Powell
The last six months have seen a steady stream of important decisions with direct or indirect implications for medical negligence practitioners. There has been some disappointment at the initial outcome in the conjoined appeals in Paul & Ors (see below), where the Court of Appeal held that it was bound by earlier precedent in setting an arbitrary limit of ‘proximity’ in secondary victim claims; but the excitement of anticipation that the matter will now be reconsidered by the Supreme Court, who have effectively been invited (by the presiding judges) to re-clarify the law in this area. This is a long-awaited development that will have wide-ranging implications in clinical negligence cases, particularly where there has been negligent misdiagnosis, because there is inevitably significant delay between the act of negligence and any resulting traumatic event that might be witnessed by a close relative and trigger psychiatric injury.

More widely, practitioners will be aware of the Ockenden Report and the consultation on extending the Fixed Costs Regime to clinical negligence cases valued up to at least £25,000, as well as preliminary moves towards stricter enforcement of ADR. This edition therefore includes an opinion piece from Peter Freeman, an expert on Early Neutral Evaluation (ENE), who strongly advocates for this type of ADR but on a voluntary rather than compulsory basis. It is notable that ENE can now be ordered by the Court under CPR 3.1(2)(m) and it can be anticipated that, where parties refuse to engage in other forms of ADR, such an order will increasingly be sought. This is likely to result in more streamlined and effective justice than further extension of the fixed costs regime that would inevitably limit access to justice in complex but important cases of limited financial value; classic examples would be those involving the deaths of minors. ENE would also be a far better and fairer solution to reducing litigation costs than the new drive to introduce some form of 'no fault scheme' (as now advocated by the House of Commons' Health and Social Care Committee). There is no doubt that battles lie ahead on this issue.

These are just some of the matters that are considered in this edition. To help you navigate the contents with greater ease, here is a more detailed overview of what you can expect: –

Breach of Duty & Causation
• To kick us off, I will be discussing the Court of Appeal's determination of the combined appeals in Paul v The Royal Wolverhampton NHS Trust, Polmear v Royal Cornwall Hospital NHS Trust and Purchase v Ahmed [2022] EWCA Civ 12, which grapple with the thorny issue of secondary victim claims for psychiatric harm (specifically the requirement of 'proximity').

• Dominic Adamson Q.C. and Rochelle Powell dissect the tragic case of Traylor & Anor v Kent and Medway NHS Social Care Partnership Trust [2022] EWHC 260 (QB) which concerned the overlap of civil litigation and convention rights (as well as the defence of illegality).
• Emma-Jane Hobbs analyses Toombes v Mitchell [2021] EWHC 3234 (QB) which touches on the vexed principle of 'wrongful birth' in the context of pre-conception advice.
• James Arney Q.C. analyses Thorley v Sandwell & Est Birmingham NHS Trust [2021] EWHC 2604 in which the High Court invited an "authoritative review" of the principles governing 'material contribution' as it relates to causation in clinical negligence cases.

Evidence
• Anthony Johnson breaks the duck of the Newsletter's new section specifically on evidentiary issues with analysis of Watson v Lancashire Teaching Hospitals NHS Foundation Trust [2022] EWHC 148 (QB).
• James Laughland considers Dalchow v St George's University NHS Foundation Trust [2022] EWHC 100 (QB), which underscores the importance of proving factual causation as an element of establishing liability in medical cases.
• James Yapp, analyses HTR v Nottingham University Hospitals NHS Trust [2021] EWHC 3228 (QB) in which the trial judge had to assess the accuracy of a witness' recollection and the utility of (neutral) entries in medical records.
• Marcus Grant considers Radia v. Marks [2022] EWHC 145 (QB), a professional liability case pertaining to the scope of liability for expert witnesses.

Procedure
• Turning to procedural issues, Philip Matthews highlights the updated clinical negligence standard directions. • Richard Boyle explores the interplay between capacity and limitation via the case of Aderounmu v Colvin [2021] EWHC 2293 (QB).
• As to costs issues specifically, Anthony Johnson analyses Gibbs v King's College NHS Foundation Trust [2021] EWHC B24 (Costs), which related to remission of court fees and failure to mitigate.
• Philip Matthews summarises the Practice Note by the Senior Costs judge which sets out some helpful practical guidance on the approval of costs settlements, assessments under CPR 46.4(2) and deductions from damages, as it relates to children and protected parties.
• Finally in this section, I consider Ho v Adelekun [2021] UKSC 43 in which the central question before the Supreme Court was: in claims to which Qualified One Way Cost Shifting ('QOCS') applies, is it permissible to order set-off of a defendant's costs against a claimant's? Alternative Dispute Resolution
• Peter Freeman makes a guest appearance to consider recent developments away from the Courtroom, which will affect the way claims are resolved in future. In particular, he considers the Ockenden Report and the Fixed Costs Regime for Clinical Negligence, as well as arguing for a greater emphasis on voluntary Early Neutral Evaluation.

Rehabilitation
• To conclude, Philip Matthews and I set out the new NICE guidelines on 'Rehabilitation After Traumatic Injury', which provide a set of useful recommendations for best practice.

We very much hope you enjoy this publication, and welcome any feedback.

Lionel Stride

Editor

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

£1m settlement for a 30-year-old steel worker supervisor who developed chronic neuropathic pain in his right foot following a workplace accident

27/04/2022

Barristers involved: Marcus Grant
This 30-year-old steel supervisor sustained fractures to his right second metatarsal and cuboid bones following a crush injury in the workplace. The fractures were treated conservatively. He developed a burning pain across the dorsum and ball of the foot. That pain became entrenched and chronic long after the fractures united. In the acute and subacute post-accident periods, he developed psychological symptoms satisfying the diagnostic threshold of an adjustment disorder, which remitted to sub-clinical levels by the second anniversary of the accident. He was left with enduring pain of variable intensity that limited his ability to place weight through the ball of the foot for prolonged periods. On his case, the prognosis for further significant recovery past the fifth anniversary of the accident was poor. It left him unsuited to moderately heavy physically demanding manual work in which he thrived before the accident. The bulk of his claim comprised his past and future reduced earning capacity. The defendant contended that he was less disabled in the labour market than he presented, relying on covert surveillance evidence in support of that contention; further, it suggested that his future prognosis was more optimistic than he claimed and disputed his 'but for' career potential by serving statements from colleagues making unkind observations about his competence in the workplace before the accident. The claimant responded by adopting the covert surveillance, which he contended corroborated his case. He submitted rebuttal witness evidence to contradict the evidence from the defendant's witnesses

that he was an unsatisfactory employee before the accident. The case settled for the above sum following a joint settlement meeting six months before trial.

£1m settlement for a 30-year-old kitchen manager who developed chronic pain following a road accident who was met with a fundamental dishonesty defence

23/03/2022

Barristers involved: Marcus Grant
This 30-year-old kitchen manager working in the hospitality sector sustained an L3 burst fracture, PTSD, soft tissue injury to his right shoulder and right knee and a mild traumatic brain injury in a high energy road accident.

He presented with ongoing mechanical low back pain at the site of the L3 fracture, made worse with prolonged standing, loading of his spine and prolonged periods of time on his feet.

He had a low average premorbid IQ and was left with an array of subjective cognitive symptoms characterised by heightened distractibility, impaired concentration, impoverished working memory and heightened mental fatigue, exacerbated by any activity requiring prolonged periods of concentration.

Over the 5 ½ year period after the accident he managed to return to a reasonable level of physical function that included an ability to jog for short periods and return to noncontact football for up to 30 minutes a couple of times a week.

He continued to require a lot of support from within the family and struggled with independent living.

He provided 3–4 hours per day, three days a week of assistance to his brother's sandwich delivery business, delivering sandwiches, as part of his vocational rehabilitation.

He presented a claim on the basis that he needed further support from outside the family to recover greater independence and that he would be left with a reduced earning capacity for the rest of his life.

The defendant contended that he had made a good recovery from his injuries and that he was fit enough to return to full-time work in the hospitality sector, provided that he avoided heavy lifting.

It denied that he had sustained any significant traumatic brain injury and contended that any enduring subjective symptoms of chronic pain were maintained by litigation and would not persist in to the long-term future. It contended that he had been over-provided with rehabilitation, which had fostered a misplaced sense of dependency.

After the fifth anniversary of the accident, the defendant served surveillance evidence backed up with allegations of fundamental dishonesty, asserting conscious dishonest under-reporting of function to the medical experts.

That allegation was met with a reply denying fundamental dishonesty, asserting that it should never have been pleaded and seeking indemnity costs at trial.

The case is settled at a JSM seven weeks before trial.

£4.4m settlement for a businessman who developed functional neurological disorder and chronic pain following a running down accident

21/03/2022

Barristers involved: Marcus Grant
A 38-year-old businessman was run over at low speed by a reversing articulated lorry in what was an objectively horrifying accident.

He sustained a mild brachial plexus injury to his dominant arm, audiovestibular injury to his left saccule and utricle triggering a migraine variant balance disorder and phonophobia, PTSD, a major depressive episode of moderate to severe intensity, chronic widespread primary pain and a probable mild / possible symptomatic brain injury overtaken by a functional neurological disorder ["FND"].

The symptoms proved resistant to treatment, including 22 weeks as an inpatient at a facility specialising in psychiatric injury. At the 6th anniversary he presented with debilitating symptoms and was in receipt of a state funded 24/7 care regime.

He failed all PVTs and SVTs administered to him by the parties' neuropsychological experts (one test out of seven was below chance level) and was taking a combination of powerful anti-psychotics and neuropathic pain agents with opiate properties.

C contended that PVT / SVT failure was expected as part of the FND presentation.

Whilst the defendant harboured some concerns about his credibility, the principal issues between the parties at the 6th anniversary of the accident concerned the adequacy of historic treatment / rehabilitation and his prognosis.

D adopted a position that historic treatment lacked coordination, had been too focussed on brain injury and fostered a misplaced sense of dependency by C on others.

C rejected these propositions and observed that D had failed to disclose any lay witness or surveillance evidence to contradict the factual precision of C's stated case.

The case settled through negotiation at a level where both parties respected the merits of the other's case.

£3.9m settlement for a university student who sustained a brain injury in a road accident

16/02/2022

Barristers involved: Marcus Grant
A then 19-year-old undergraduate sustained a severe traumatic brain injury in a road accident. He was left with mild dysexecutive symptoms, some cognitive weakness and significantly reduced mental stamina. He received excellent rehabilitation including a trial of independent living that was frustrated by the lockdowns.

He was left with a modest theoretical residual earning capacity premised on the need to secure part time non-stressful work with a

diversity-aware employer prepared to make adjustments to accommodate his enduring difficulties.

He required a light touch case management and support worker regime to provide him with additional prompting and safeguarding in times of stress and to ensure that he maintained sustainable goals and structured activities to provide for a reasonable quality of life. He was destined to have to accommodate loneliness associated with being less able to sustain lasting supportive relationships.

The settlement reflected his aspirations to follow a career that would have paid above average postgraduate earnings, had he succeeded. That career model was discounted to reflect the loss of chance.

The case settled through a structured negotiation with each side respectful of the other's position.

QBD judgment for £1.67 million in favour of a mild traumatic brain injury Claimant faced with a fundamental dishonesty defence following a rear-end shunting road accident

20/01/2022

Barristers involved: Marcus Grant
Marcus Grant, instructed by Patricia Ling and Lucy Walpole of Garden House Solicitors, represented a 34-year-old Claimant ["C"], Natasha Palmer who suffered an enduring cluster of physical, cognitive, behavioural and psychological symptoms following a rear-end shunting accident on the M25. She brought a seven-figure compensation claim.

She was met with a defence alleging that she was fundamentally dishonest because she had dishonestly exaggerated her post-accident difficulties and had dishonestly under-reported her pre-accident vulnerability. The Second Defendant's ["D"] valuation of the claim was £5,407.

On her case, she sustained a whiplash injury, mild traumatic brain injury ["mTBI"] with associated post-traumatic migraine, subtle audiovestibular ["AV"] injury and secondary psychological sequelae sufficient to derail a promising career in marketing.

D accepted only that she had sustained a short-lived whiplash injury and that some psychiatric injury had resulted that aggravated a pre-accident relevant psychological history but denied that she had sustained any organic brain injury and denied that any of her enduring difficulties were attributable to the accident.

C's focus after the accident was on her physical injuries, principally a whiplash injury to her neck and low back and also soft tissue injuries to her left knee. She was also troubled by headaches that she understood to be a consequence of a 'concussion', diagnosed in hospital on the day after the accident, which she was reassured would settle over time.

She returned to work within 10 days of the accident and struggled. She resigned from her job 5 months later and then, 3 months later, took on a part time role as a self-employed consultant in marketing for 9 months before starting a third job, in which she also struggled, and was permitted to work from home for some of the time.

c. 2½ years after the accident her physical and psychological health deteriorated and she sought more medical help, in part through the medico-legal experts instructed by her legal team. A traumatic brain injury was confirmed for the first time by a medico-legal expert on the eve of the third anniversary of the accident; subsequently, she was confirmed to be presenting also with audiovestibular pathology, PTSD, major depression and chronic post-traumatic migraine.

She continued to report significant pain from her injury sites which had become chronic. Pain experts were instructed. She was found to have been asymptomatically hypermobile before the accident, a poor prognostic indicator to recovery from soft tissue injury.

The Claimant's medico-legal team presented a picture of mTBI with overlap injuries from the chronic pain, specifically the post-traumatic migraine, AV pathology and significant enduring neuropsychiatric symptoms, all of which persisted with variable levels of severity at the 7½ year anniversary at the time of the adjourned trial in November 2021.

The Defendant elected not to engage in the Rehabilitation Code. It sought instead to focus its defence on C's pre-accident history of intermittent depressive episodes. 5½ years post-accident, it deployed c. 700 pages of C's social media posts to advance a positive case of fundamental dishonesty, set out in a pleading 18 days before the original trial in the action in March 2020 (adjourned

because of the first pandemic lockdown), , contending that C's self-report of her variable levels of function to the medico-legal experts belied the impression she chose to portray to the outside world on her open Instagram and Facebook accounts.

Upon service of the fundamental dishonesty pleading, C asked D for its covert surveillance that it had elected not to deploy or rely on. 17 days of covert surveillance were disclosed, which largely corroborated C's subjective account of her activity levels to the experts and was not referred to by D in its closing submissions.

At trial, C's experts laid before the Court their coherent methodologies in reaching their clinical formulations of C's presentation. On the issue of mTBI, C's neurological expert, supported by her neuropsychiatric and neuropsychological experts, explained that the acceleration-deceleration-rotation mechanism of trauma to the brain would have impacted specifically on the midline structures of C's mid brain, specifically the fornix and the corpus callosum, which he identified as a 'cone of vulnerability' to such a trauma.

The Court accepted that such an injury explained the delayed pattern of denser PTA commencing c. 30 minutes after the accident, consistent with a diagnosis of mTBI.

The Court placed particular reliance on the academic paper "Concussion is confusing us all" by Prof Sharp, which explained the importance of a systematic approach to brain injury assessment, discouraged clinicians from trivialising head injury severity by a diagnosis of 'concussion', and confirming that a significant minority of mTBI patients had a poor outcome; that minority generally presented with overlap injuries, as in C's case.

Also, the Court accepted that chronic pain was an accepted consequence and complication of mTBI.

The Court preferred C's experts to D's experts across all disciplines that gave oral evidence. The Court observed: "Many of the issues concerning the Claimant's symptoms and the complicated inter-play between the physical, neurological and psychological consequences of the accident required sophisticated and at times cutting-edge expert evidence."

The Court was critical of two of D's experts. It observed that D's neuropsychological expert's first report was "littered with judgmental and rather scathing comments and that her language went beyond that which was appropriate for an expert to employ and suggested a level of unconscious bias".

The Court was unable to attach any weight to D's pain expert who had departed from his CPR 35 duties to the Court in a number of respects. The Court cited the Court of Appeal decision in Liverpool Victoria v. Zafar [2019] EWCA Civ 392 in stating that the importance of the Practice Direction to CPR 35 and the importance of not departing from CPR 35 duties, either intentionally or recklessly, "cannot be over-emphasised".

The Court rejected D's submissions that quantification of the loss of earnings claim should be by reference to a lump sum Smith v. Manchester / Blamire approach, distinguishing the cases of Billett v Ministry of Defence [2015] EWCA Civ 772 and Murphy v Ministry of Defence [2016] EWHC 03 (QB) on the facts, preferring instead a multiplier-multiplicand approach, following the dicta in Inglis v Ministry of Defence [2019] EWHC 1153.

The Claimant recovered c. £1,679,406 in damages and an additional c. £75,000 pursuant to CPR 36.17(4)(d) and some of her costs to be assessed on an indemnity basis with penalty interest.

A copy of the judgment can be found here.

You can view the publication at
https://www.lawgazette.co.uk/news/judge-warns-expert-after-claimant-described-as-histrionic/5111233.article

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£1.097m settlement for a 47-year-old Teaching Assistant who developed chronic pain following a slipping accident

12/01/2022

Barristers involved: Marcus Grant
Long description A 47-year-old Teaching Assistant sustained soft tissue injury to her right sacroiliac joint in a workplace slipping accident. The soft tissue injury did not progress towards full resolution. Instead, she developed referred neuropathic pain down the right leg which had some intermittent features of CRPS.

Within a few days of the accident, the pain spread to her right upper limb; thereafter she presented with profound neuropathic pain in her right upper and lower limbs. In the early period, some of the treating clinicians diagnosed Type I CRPS without nerve injury. However, over time the visible symptoms of CRPS remitted such that the Budapest criteria were not satisfied. The pain persisted. She suffered a loss of function in the workplace and in her home lives; an adjustment disorder with a prolonged depressive reaction followed. She became profoundly disabled by her pain.

She presented with some prior psychological vulnerability. Roughly 20 years before the accident, she developed some right sided sciatica and coccygeal pain following childbirth which caused her some difficulties for a short period. Femoral neuralgia was diagnosed at the time, and she was noted to have depression.

There were intermittent references to medically unexplained pains, including abdominal and pelvic pains; on one occasion she presented with pain in her right hand with a subjective colour change to the skin. Her work record was good. She was a mother to 4 children and had worked full time throughout most of the previous 20 years.

Her case was that she sustained a traumatically-induced primary chronic pain condition, characterised by neuropathic pain in the right upper and lower limbs that, at times, satisfied the CRPS diagnostic criteria. To the extent that her condition could not be explained in purely organic terms, it was explicable by reference to a diagnosis of somatic symptom disorder with predominant pain.

The litigation was put back to see whether her symptoms would remit with bespoke one-on-one treatment with a chronic pain physiotherapist and a chronic pain psychotherapist. By the eve of the sixth anniversary of the accident, the prognosis was guarded.

On her case, she would never work again and required daily input from a support worker and single level accommodation.

The defendant's response was to suggest that the onset of the chronic symptoms following the six-month anniversary of the accident was a coincidental manifestation of a pre-existing psychological vulnerability, probably a pre-existing somatoform pain disorder. The causal nexus between the slipping accident and the emergence of the chronic symptoms was doubtful. In the alternative her symptoms were maintained by the stress for litigation and would remit swiftly following the conclusion of the litigation.

The parties negotiated against that evidential stand-off. The case settled eight weeks before trial through negotiation, with both parties moving away from their best-case positions.

£920,000 settlement for a 36-year-old police officer who developed chronic pain following a road accident

12/01/2022

Barristers involved: Marcus Grant
A 36-year-old police officer sustained soft tissue injuries including a left labral tear in a high-energy deceleration car crash.

She required surgery to the labral tear which left her with residual pain. In addition, she suffered post-traumatic stress disorder, depression and some vestibular damage to her right utricular macular that left her with intermittent episodes of migraine-variant balance disorder and visually induced dizziness. She was also left with pain in her neck, low back and left shoulder.

She attempted to return to light adjusted duties with the police but was unable to cope because of pain, and neuro cognitive symptoms. She was retired from the police on the grounds of ill health after the third anniversary of the accident. She was left with restricted mobility, mobilising with a single crutch outdoors. Surveillance evidence was disclosed which usefully illustrated her residual restricted levels of function.

On her case, she had some prior vulnerability to a poor outcome following significant trauma though, on the balance of probability, this would not have manifested in the absence of such trauma. Her prognosis past of the sixth anniversary of the accident was guarded; namely, there was a 40% chance of significant improvement including complete resolution of symptoms and a 60% chance of minimal improvement including the possibility of deterioration post-settlement of her claim.

The defendant considered that she was extremely vulnerable to developing a somatic symptom disorder with predominant pain in

the absence of trauma and speculated that some of her pre-accident abdominal pain was psychosomatic.

On C's case this pre-accident history of abdominal pain and pain on intercourse was attributable to microscopic endometriosis and responded well to the implementation of a Mirena coil before the accident.

On the defendant's case her career in the police was likely to have been short lived by reason of her vulnerability, irrespective of the accident. She had become extremely distressed by the litigation process and would like to make a swift and full recovery post settlement.

The parties negotiated against that evidential dichotomy. The case settled 10 weeks before trial through negotiation, with both parties moving away from their best-case positions.

£1.66m gross settlement for a 30-year-old welder who sustained trans-humeral amputation following a motorcycle accident

14/12/2021

Barristers involved: Marcus Grant
Within weeks of the accident, he returned to his welding work with a dominant flail arm. 13 months after the accident he elected to have the flail arm removed via a trans-humeral amputation and he returned to work once more as a one-armed welder. Showing astonishing courage and receiving assistance from his employer who made a series of adjustments to accommodate him as a one-armed welder, he continued to work in that trade over the ensuing 6 years whilst the liability dispute following the accident continued.

The physical ordeal of that struggle to work imposed significant strain on his contralateral upper limb and on his spine.

6 years before the motorcycle accident he sustained bilateral femur fractures and significant fracture injury to his non-dominant wrist which left him with residual symptoms at the time of the motorcycle accident. These pre-existing conditions complicated the analysis of the 'but for case'.

Following resolution of liability and receipt of an interim payment, at the 6th anniversary of the accident, he stepped away from welding and started less well remunerated light sedentary work.

The trans-humeral amputation was too high to accommodate any bionic prostheses.

He enjoyed the support of a loving wife and close family who had provided all the care and support over the preceding 6 years to facilitate his full-time work.

His settlement factored in allowances for risks that his levels of function may deteriorate in older age.

His settlement also reflected his astonishing stoicism in coping with catastrophic injury.

The case settled via a structured negotiation.

£607,000 settlement for a 48-year-old Police Officer who sustained mTBI in a RTA.

07/12/2021

Barristers involved: Marcus Grant
Thereafter the Traffic Officer developed a constellation of symptoms commonly seen after a concussive head injury to include migraine headache, dizziness, nausea, blurred vision, sensitivity to light and sound, impaired memory, difficulty sleeping, impaired concentration, reduced ability to multitask and mental fatigue.

He was diagnosed in A&E with a concussion and discharged home with reassurance that he would make a swift recovery. His recovery did not materialise and he became increasingly anxious as he became unable to work. He received neuro rehabilitation

which focused on cognitive behavioural techniques and audio vestibular physiotherapy, none of which broke the deadlock of his symptoms.

He was forced to leave the Police Service after 20 years' service on the ground of medical incapability, following which is mood levels dipped further. By the fourth anniversary of the accident he had become a shell of the man he was before the accident. He presented with profound mental fatigue, intrusive migraine headaches, impaired balance and loss of self-confidence. He had become dependent on his wife to prompt him.

He received a rehabilitation package that focused on getting him to engage in activities away from the home. The Covid lockdowns interfered with this rehabilitation.

His case was presented on the basis that he had sustained a mild traumatic brain injury with overlapping neuropsychiatric and audio vestibular injuries and had fallen into the small but significant cohort of mTBI patients who have lasting debilitating symptoms following mild traumatic brain injury.

It was contended on his behalf that he would be unlikely to recover any remunerative and capacity and that he needed a structured rehabilitation package that could be tapered down to a minimal maintenance level over the course of 24 months post settlement.

The defendant instructed a team of experts that was prepared to accept that he had sustained a technical mild traumatic brain injury per the Mayo classification criteria, but which contended that the organic contribution from the brain injury dissipated within a matter of months of the injury. It contended that his chronic presentation was explicable by a misinformed belief as to the seriousness of the brain injury and psychological factors that would resolve once the litigation was settled.

Various quantum arguments were raised about his 'but for' career model and residual earning capacity. The need for any substantive structured ongoing rehabilitation was denied.

The above settlement sum represented a compromise between the Parties' respective positions.

TGC Clinical Negligence Newsletter – Second Issue, November 2021

16/11/2021

Barristers involved: Lionel Stride Marcus Grant Ellen Robertson James Arney QC James Laughland Robert Riddell Nicholas Dobbs Rochelle Powell Anthony Johnson James Yapp
To help you navigate this edition, here is an overview of what you can expect: –

Procedure, Limitation & Expert Evidence
• To kick us off on recent procedural developments, Marcus Grant considers Calderdale & Huddersfield NHS Foundation Trust v Metcalf [2021] EWHC 611 QB in which the Court handed down a six-month prison sentence against a claimant as punishment for contempt of court for signing statements of truth on court documents containing facts that she knew to be untrue.
• Ellen Robertson looks at Wilkins v University Hospital North Midlands NHS Trust [2021] EWHC 2164 (QB), which considers the old chestnuts of 'date of knowledge' for the purposes of limitation and the 'balancing exercise' undertaken by the Court when considering whether to utilise its discretion under section 33 of the Limitation Act 1980
• James Arney Q.C. considers PAL v Davidson [2021] EWHC 1108 (QB), an application by a 13-year-old claimant who had suffered catastrophic injuries for an interim payment of £2 million to enable a suitable property to be purchased for her long-term accommodation needs.
Fourthly – and this is itself a new development for the TGC Clinical Negligence Newsletter – we will take you through a quick-fire review of four key cases in the field.

Breach of Duty & Causation
• Turning to questions of liability, James Laughland first considers the Supreme Court's much awaited judgment in Khan v Meadows [2021] UKSC 21, in which the centrality of the 'scope of duty' principle was affirmed as a determinative factor in medical advice cases.
• I (Lionel Stride) then examine the battery of post-Montgomery case law concerning patients' informed consent to treatment.
• Following on from the above, Robert Riddell analyses Negus (1) Bambridge (2) v Guy's & St Thomas' NHS Foundation Trust [2021] EWHC 643 (QB), which concerns the extent to which a doctor is under a duty to warn a patient before surgery of the material risk which may arise from intra-operative technical decisions.

• Nicholas Dobbs examines Sheard v Cao Tri Do [2021] EWHC 2166 (QB), which provides an instructive example of the difficulties in clinical negligence claims when resolving conflicts between witness evidence and contemporaneous medical notes.
• James Laughland analyses Davies v Frimley Health NHS Foundation Trust [2021] EWHC 169 (QB) in which the Court considered whether the making of a material contribution to harm was sufficient to establish liability in a clinical negligence claim.
• Rochelle Powell considers Jarman v Brighton and Sussex University Hospitals NHS Trust [2021] EWHC 323(QB), which provides an interesting exposition of the Bolam test in the context of an alleged failure to refer the claimant for an emergency MRI.
• Anthony Johnson considers Brint v. Barking, Havering and Redbridge University Hospitals NHS Trust [2021] EWHC 290 in which the Judge's consideration of the claimant's lack of credibility as a witness did not equate to a finding of fundamental dishonesty for the purposes of CPR 44.16.
• James Arney Q.C. analyses XM v Leicestershire Partnership NHS Trust [2020] EWHC 3102 (QB) in which the Court considered the standard of care to be expected from 'health visitors'; the judgment is a practical application of the principles established in Wilsher and Darnley.
• I (Lionel Stride) then set out a quick-fire summary of some of the other interesting recent clinical negligence cases that did not (quite) make the cut for articles.

Calculation of Damages
• Turning to questions of quantum, Anthon Johnson analyses Reaney v. University Hospital of North Staffordshire NHS Trust [2015] EWCA Civ 1119, which is significant for two reasons: (i) the Court provided guidance on the applicability of the test of causation in a case where a non-negligent injury had been exacerbated by the Defendant's clinical negligence; and (ii) the Master of the Rolls commented obiter on the applicability of the 'material contribution' test in claims of that nature.
• Blowing the final whistle on this edition, James Yapp then considers Owen v Swansea City AFC [2021] EWHC 1539 (QB), in which the Court addressed the question of how to calculate the likely career earnings of a young professional footballer.

We very much hope you enjoy this publication, and welcome any feedback.

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

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Marcus Grant delivered a lecture to 170 APIL delegates on mild traumatic brain injury
09/11/2021

Barristers involved: Marcus Grant
The lecture sought to harness some of the themes from the two 2021 QBD mTBI judgments in the cases of Stansfield v. BBC [2021] EWHC 2638 (QB), heard by Mrs Justice Yip and Long v. Elegant Resorts Limited [2021] EWHC 1330(QB) heard by his Honour Judge Pearce QC sitting as a judge of the High Court.

A copy of the lecture is available in here.

Marcus Grant and Rhys Davies Shortlisted for the 2021 Bar Pro Bono Awards.
07/10/2021

Barristers involved: Marcus Grant Rhys Davies
The winners will be announced at a drinks reception and ceremony on the 3rd November. A full list of the nominees can be found via the link below.

You can view the publication at https://weareadvocate.org.uk/award-nominees.html

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QBD judgment for £2.42 million, reduced by 33% to £1.6 million for contributory negligence, made by Mrs Justice Yip to BBC TV Presenter, Jem Stansfield in respect of his mTBI / audiovestibular workplace injury claim
01/10/2021

Barristers involved: Marcus Grant Jonathan Watt-Pringle QC
Marcus Grant, instructed by David Marshall of Anthony Gold Solicitors, represented a 50 year old Claimant ["C"], Jem Stansfield suffered a mild traumatic brain and ancillary subtle injuries in a crash test experiment in the course of his employment for the BBC.

The experiment involved C acting as a crash test dummy for the BBC in two forward facing and two rear-ward facing simulated crashes into a metal post at impact speeds of between 8 and 11 mph (which can be viewed on YouTube).

On his case, C sustained a whiplash injury, mild traumatic brain injury ["mTBI"], subtle audiovestibular ["AV"] injury, and secondary psychological sequelae sufficient to derail a promising television career.

The BBC accepted that C suffered a moderate whiplash injury with depressive symptoms but denied that he sustained any brain or AV injuries and put him to proof of his claim, citing the dicta in Pickford v. ICI [1998] 1 WLR 1189 that required a Claimant to prove the medicine underpinning his claim in circumstances where 'the case involves the assessment of complex and disputed medical evidence'.

The case was heard by Mrs Justice Yip DBE over the course of 10 days. The Court found that the interplay between different medical disciplines was complex and that C had suffered injury to his neck, brain and AV system and secondary psychiatric injury in the crash tests. Individually none of these injuries was particularly serious, but their cumulative effect could be. Research and clinical practice demonstrated that each of these injuries can be associated with unexpectedly poor outcomes and that C fell into this patient cohort.

Notwithstanding the absence of any neuroradiological findings of brain injury or clear evidence of post-traumatic amnesia, the Court found that C had nevertheless sustained a mTBI.

The Court considered expert engineering evidence that confirmed that each of the crash tests had exposed C's brain to potentially damaging forces, that repeated impacts over a short period increased the risk of TBI, that there was evidence of cognitive impairment after the crash tests, notwithstanding that he was able to continue performing in front of the camera, there was evidence of short lived anosmia and that he developed more obvious signs of agitation and confusion and uncharacteristic behaviour roughly 6 hours later. Also, there was evidence of strikingly impaired processing speed performance on valid neuropsychological testing.

It was common ground between the neurological experts that some mTBI patients experience ongoing symptoms of brain injury and are subject of great interest in focus.

The Court found that C sustained subtle damage to his left utricle and semi-circular canal (of the inner ear) as a result of the crash tests which was the cause of his early complaints of dizziness and balance problems and of his migraine. This damage was observed following meticulous and reliable neurotological assessment. It found that the tinnitus that presented several weeks after the crash tests was attributable to them. The objectively modest AV damage could not explain the ongoing significant impairment on its own, but was another important piece of the jigsaw to C's complex presentation.

The Court accepted that C developed a significant psychological reaction that was superimposed on his organic injuries that included a major depressive episode and post-traumatic symptoms;, over time, his presentation satisfied a dual diagnosis of Somatic Symptom Disorder lying alongside the enduring whiplash, mTBI and AV injuries.

Four weeks before trial, the Defendant elected not to rely on its neuropsychological or psychiatric evidence. The Court rejected the Defendant's neurological and AV experts' evidence that excluded any mTBI or AV injury attributable to the crash tests.

The Court assessed C's damages at £2.42 million, the bulk of which represented lost earning capacity on a loss of chance analysis. One third of the award was deducted to reflect an agreed 2/3:1/3 liability apportionment agreed between the parties.

The Court expressed its astonishment that anyone though that using a human crash test dummy to simulate a crash test at between 8 and 11 mph could be thought to be a sensible idea.

Jonathan Watt-Pringle QC represented the Defendant, instructed by DAC Beachcroft.

A copy of the judgment can be found below here.

£1.5m settlement for a 52-year-old decorator who developed Functional Neurological

Disorder 30.09.21
30/09/2021

Barristers involved: Marcus Grant
A then 46-year-old decorator was involved in a low-speed side-impact road accident causing him a whiplash injury. His head struck the side of the driver's door causing him a concussion.

He developed an array of post-concussive symptoms, including profound audiovestibular pathology which, within six weeks, progressed to non-epileptic seizures.

Within four months of the accident he presented with debilitating post-traumatic stress symptoms and became significantly disabled by acute neurological, audio-vestibular, neuro-cognitive and neuropsychiatric symptoms.

The headline diagnosis to explain his presentation was Chronic Mixed Functional Neurological Disorder with non-epileptic attacks and Complex Post-Traumatic Stress Disorder.

He has been the subject of objectively significant physical and emotional abuse in his childhood, though had led a productive and active adult life, raising a family and holding down employment over the intervening c. 30 years up to the time of the accident.

No issue was taken as to the genuineness or severity of his presentation. The dispute between the parties coalesced around the issue of his vulnerability.

The Claimant presented his case by applying a modest percentage discount (a 'Malvicini discount') to the overall value of his claim to reflect a chance that, but for the accident, without any intervening compensable triggering event he may have descended into an equivalent FND that unlocked the repressed traumatic memories from his childhood.

The Defendants adopted an acceleration model, applying a diathesis stress framework for understanding the aetiology of FND, contending that the next significant adverse life event, identified on the facts as a an unrelated medical condition of divarication of the rectus muscles four years post-accident and/or the discovery of a non-functioning pituitary macroadenoma at the sixth anniversary of the accident, would on a balance of probabilities have severed the chain of causation between eth accident and his ongoing FND condition, terminating the claim at that point.

There were different approaches taken to the quantification of the care claim that focused particularly on whether or not the Claimant and his family would accept an expensive external care regime, having chosen to provide the care themselves through to the date of settlement.

The Defendants maintained a sympathetic and supportive approach to the claim, engaging proactively in rehabilitation throughout the six year period between the accident and settlement.

The claim is settled through negotiation with each party respecting the other's alternative view on analysing the causation issues in the case.

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mTBI Claimant recovers £509,000 and defends a fundamental dishonesty strike out defence in the High Court
18/05/2021

Barristers involved: Marcus Grant
On his case, he developed a mild traumatic brain injury ["mTBI"] characterised by a period of post traumatic amnesia ["PTA"] of at least a few minutes by reference to the Mayo classification of brain injury, together with post traumatic migraine, responsible for causing periodic flare-ups in his cluster of physical, cognitive, behavioural and psychological symptoms on physical and mental exertion.

On his case, the symptoms persisted, and within two months provided the kindling for the onset of a Severe Depressive Episode which then became his primary clinical condition and persisted at a severe level for at least two years before remitting partially; he was left with a residuum of his mTBI symptoms, which by that stage were better explained by reference to a Functional

Neurological Disorder and a co-existing Somatic Symptom Disorder ["SSD"].

By the date of trial he had recovered a part time earning capacity in a less well remunerated and pressurised job. He conceded a reduction in the top line of his loss of earnings claim to acknowledge a prior vulnerability to chronic pain, having suffered fibromyalgia for several years roughly 8-9 years before the accident, that had left him with low grade chronic pain through to the time of the accident for which he continued to treat with medication and graded exercise.

The Defendant ["D"] denied that there was any brain injury, explaining that his presentation reflected a pre-existing SSD unrelated to the 'mild bump on the head of a kind which people suffer regularly and which has led to no long-term consequences at all' when walking beneath the door lintel that was trivial and incapable of causing a 'Symptomatic Possible TBI' per the Mayo classification, let alone a mTBI.

D contended that the deterioration in his SSD symptoms that progressed into a genuine depressive disorder two months post-accident was stress mediated by the knowledge that he was about to be made redundant, a fact it was said by D he had lied about in the presentation of his claim; this alleged lie, coupled with consistent failure on embedded validity and stand-alone effort tests with both neuropsychological experts' tests and alleged exaggeration in his presentation in various material aspects of the claim formed the basis for D's positive strike out defence of fundamental dishonesty pursuant to Section 57 of the Criminal Justice and Courts Act 2015.

The Court preferred C's case to D's case and C's experts to D's experts wherever there was material disagreement.

Specifically, the Court found that PTA of a few minutes was sufficient to give rise to a mTBI and, importantly that it was possible to suffer PTA without showing any obvious signs of confusion.

Further the Court accepted a concession made by D's neurologist that he had experienced patients with 'pretty innocuous head injuries … sustained in sport who have had enduring symptoms going on for many years' and the Court saw no basis to distinguish sporting injuries from the facts of this case.

Further, the Court found that 'the evidence of the severity of the impact is a relatively poor indicator of the likelihood of a person suffering mTBI'.

The Claimant recovered c. £509,000 in damages and an additional c. £50,000 pursuant to CPR 36.17(4)(d) and some of his costs to be assessed on an indemnity costs.

A copy of the judgment can be found below
Long v. Elegant Resorts Limited [2021] EWHC 1330(QB)

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

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Defendant not permitted to plead fundamental dishonesty on a speculative or contingent basis

12/04/2021

Barristers involved: Marcus Grant
Master Davison handed down a reserved judgment intending to discourage pleas of fundamental dishonesty which are merely speculative or contingent.

The Defendant served an Amended Defence in a head injury claim that pleaded, inter alia, the words:

"*The Claimant's accounts of the RTA and its immediate aftermath, and the nature and severity of her symptoms both before and after the accident have varied over time, are unreliable and are in issue. They have been exaggerated (or in the case of her pre-RTA history minimised) either consciously or unconsciously – the Third Defendant cannot say which absent exploring the issues at trial. In the event that the Court finds that the Claimant has consciously exaggerated the nature and/or consequences of her symptoms and losses, the Third Defendant reserves the right to submit that a finding of fundamental dishonesty (and the striking out of the claim pursuant to section 57 Criminal Justice and Courts Act and/or costs sanctions including the disapplication of QOCS) is appropriate".*

The Claimant contended that the Defendant should not be permitted to mention fundamental dishonesty in a pleading when there was no proper evidential basis.

The Court agreed and ruled that permission to include the words underlined would be refused. It found (at §22ii):

'*a plea of fundamental dishonesty has no real prospect of success and therefore, even pleaded on a contingent basis, does not satisfy the test for granting permission to amend*''.

The Court observed that such a pleading caused the Claimant prejudice because, per §22iii:

'*a plea of fundamental dishonesty has to be reported to the claimant's legal expenses insurers and opens up a theoretical possibility of them avoiding the policy ab initio. At the very least that will create an added burden of administration and costs. Furthermore, a finding of fundamental dishonesty has grave implications for the claimant and the proposed amendment, if allowed, would be apt to raise further fears and anxieties for which, at the present time at least, there is no proper basis*'.

Providing a reserved judgment that has been reported, the Master explained per §24:

'*What I am intending to discourage are pleas of fundamental dishonesty which are merely speculative or contingent'.*

A copy of the judgment can be found here.

Claimant permitted to increase her cost budget by £96,500 following an application under CPR 3.15A

26/03/2021

Barristers involved: Marcus Grant
Master McCloud handed down a reserved judgment in an application made under the new CPR 3.15A which came into force in October 2020 replacing CPR 3.7, affording the Court a discretion to permit a party to vary their costs budget in the event of being satisfied that there has been a significant development.

On the facts in this head injury case, a Court in February 2019 budgeted the following phases of the parties' costs budgets: Issue / Statements of Case, CMC, Disclosure, Witness Statements, Experts and ADR, leaving the phases of PTR, Trial Preparation & Trial to be budgeted at a later date.

For a combination of reasons identified in the judgement, the Master acceded to the Claimant's application that there had been 'significant developments' in the case and permitted her to increase her budget by £96,500 over the six phases already budgeted. The Defendant did not request any equivalent increase to its budget.

In exercising her discretion, the Master considered earlier reported decisions in the cases of: *BDW Trading v Lantoom Ltd* [2020] EWHC Civ. 2744 (TCC), *Al-Najar v The Cumberland Hotel (London) Limited* [2018] EWHC Civ. 3532 (QB) & *Sharp v Blank and Others* [2017] 3390 (Ch.D.).

The Master restated the principle from Al-Najar '*that as a matter of policy the bar for what constitutes a significant development should not be set too high because otherwise parties would always err on the side of caution by making over-generous assessments of what was to be anticipated*'.

She confirmed that CPR 3.15A did not change the principle in BDW Trading that *'the thrust of the previous case law under rule 3.7 (the predecessor to that rule) and that once the 'threshold' of a significant development is met the court is entitled to acknowledge that may have knock-on developments to subsequent phases in the case.'*

The judgment can be seen here.

£1.05m settlement for a 50-year-old doctor who developed chronic pain following a whiplash injury.

21/01/2021

Barristers involved: Marcus Grant
A then 43-year-old doctor working part time in the pharmaceutical industry and part time as a locum GP sustained a whiplash injury in a moderately severe rear-end shunting road accident.

She developed a well-defined area of pain in her cervical and thoracic spine with symptoms in her right shoulder that did not respond to extensive courses of conservative treatments via physiotherapy, osteopathy and several trigger point injections. On her case, she developed an impingement in the shoulder from the secondary postural sequelae to the whiplash injury.

On her case, she developed a cluster of heightened anxiety and low mood symptoms that just hit the threshold for PTSD for a short period and for an Adjustment Disorder for a longer period.

She has no prior orthopaedic or psychological vulnerability that predisposed her to a poor outcome following trauma.

She persevered with her work; her earnings increased over the 18 month period after the accident. However, slowly she had to make incremental adjustments to her work and home lives to accommodate her pain as her attempts to buffer it weakened over time. She gave up her pharmaceutical work at the third anniversary of the accident and then resumed it on a reduced part time basis from the fifth anniversary.

The Defendant’s response was to assert that no symptoms beyond the anniversary of the accident could be attributed to it. Instead, any subjective report of spinal pain was attributable to coincidental symptoms from previously asymptomatic degenerative changes; further, that the shoulder pathology was wholly unrelated.

The Defendant asserted that her presentation contra-indicated a biopsychosocial model of chronic pain because there was no pre-accident vulnerability and no diagnoseable psychological response to the accident.

The case settled through negotiation against that evidential matrix.

£12m settlement for a 24-year-old who sustained a severe brain injury in a road accident aged 9

15/12/2020

Barristers involved: Simon Browne QC Marcus Grant
£12m settlement for a 24-year-old who sustained a severe brain injury in a road accident aged 9 approved by Ellenbogen J.

She sustained poly trauma including visible white-matter damage on CT to her frontal and temporal lobes.

Whilst she made a relatively good recovery in terms of her cognitive functioning, neuropsychometric testing revealed some enduring weaknesses.

16 years later at the time of settlement aged 24, she presented with significant difficulties with inhibition, cognitive shifting, emotional control, self-monitoring, initiation, working memory, planning and organising, task monitoring and organising materials. She also presented with functional non-epileptic seizures.

By reason of her very severe executive difficulties including poor regulation, she was unable to lead an independent life.

The critical questions in the quantification of her claim revolved around the extent that the scaffolding of her support regime may be reduced over time in the future, her life expectancy, the likelihood of becoming a mother and the feasibility of her forming a sustainable relationship which may reduce her need for professional care.

The claim was settled through negotiation and approved by Ellenbogen J.

£550,000 settlement for a 43-year-old unemployed baker who sustained a brain injury in an unusual running down accident

19/11/2020

Barristers involved: Marcus Grant
C became involved in an altercation during the hours of darkness in a poorly lit area with his wife and lover with them locked inside a car and him hitting the window with his fists.

D started the car and drove off dragging C whose hand became wedged in the nearside door handle by the forward momentum of the vehicle. He was dragged over a distance of 300 m and deposited on the main road when the vehicle drove over him causing serious injury.

Liability was disputed vigorously, D claiming that he was unaware of C's presence alongside his car until after he was deposited on the main road.

C sustained poly trauma including a traumatic brain injury and, for a time during the litigation, lacked capacity to litigate or manage his financial affairs. His health improved to the point where he recovered capacity by the time the claim was finally settled through negotiation, without admission of primary liability by D.

£1.2m settlement for a 61-year-old hotelier who sustained a head injury in a road accident

11/11/2020

Barristers involved: Marcus Grant
The Claimant was involved in a high speed rear end shunting accident when his motorcycle was struck from behind. He sustained a number of bony injuries and a suspected head injury.

As is common in such cases, his physical injuries predominated the acute and subacute recovery phases. However, it was the consequences of the head injury that became most debilitating in preventing him from returning to running his restaurant and hotel businesses as he would have liked.

He presented with a classic cluster of physical, vestibular, neuro cognitive, behavioural and psychological symptoms. The most disabling of these were his compliance mental fatigue, his disinhibited temper and his inability to read social cues.

On the basis of his experts' evidence, the diagnoses underpinning this enduring cluster of symptoms were technically 'moderate/severe' diffuse axonal injury by reference to the MAYO classification, concussion of the vestibular system, post-traumatic migraine and a mild neurocognitive disorder with behavioural disturbance due to traumatic brain injury (DSM V 331.83).

His standard MRI scans were 'normal. However, a DTI MRI scan at the 4th anniversary of the accident identified two areas of micro hemorrhage indicative of traumatic diffuse axonal injury within corpus callosum.

The Defendant's expert team dismissed any suggestion of traumatic brain injury, even in the face of the DTI scan, which they dismissed on the grounds of being a research tool, incapable of dating any artefacts, which in any event were more likely attributable to the claimant's pre-accident medical history of having suffered falls as an amateur jockey.

The Defendant attached weight to his failure on symptom validity and effort testing to insinuate that there was an element of psychological overlay in his presentation which may or may not have been volitional.

The Defendant contended that his hotel and restaurant business would likely have failed in any event by reason of the Covid pandemic.

The claim was compromised part way between the parties' respective best cases through a structured negotiation.

£4.48m gross of contributory negligence settlement for a 18-year-old who sustained a severe brain injury in a running down accident aged 11 approved by Lambert J

28/10/2020

Barristers involved: Marcus Grant
C sustained a significant traumatic brain injury in a running down accident.

He went on to develop a moderate to severe dysexecutive syndrome presenting as a cluster of neuro behavioural difficulties including lack of empathy, poor insight, impulsivity, poor judgement, anger, irritability, obsessive compulsive behaviours, disinhibition and aggression.

The issues underpinning the settlement revolved around his need for support. Assessment of those needs were covered by the fact that he had pre-accident behavioural issues against the backdrop of some psychosocial disadvantages; further there was a question as to the extent that he would accept an expensive support worker regime, and the extent to which he had capacity to moderate his behavioural issues in the future.

Liability was compromised at an earlier stage in the case with the 60:40 split in C's favour. The insurer made an early settlement offer shortly after C reached his majority, which subsequently was accepted and approved by the court.

£756,000 settlement for a 42-year-old ground worker who sustained injuries to his foot and back and tinnitus in a road accident

04/09/2020

Barristers involved: Marcus Grant
A 42-year-old ground worker recovered £756,000 in a negotiated settlement in respect of injuries to his foot and back and tinnitus sustained when the van he was driving was struck by an oncoming vehicle causing it to overturn. In addition, he sustained a mild traumatic brain injury and a major depressive disorder from which he made a good recovery by the 3rd anniversary of the accident.

He was unable to return to his physically demanding trade and his modest academic qualifications and dyslexia made it more difficult for him to return to remunerative employment. He worked hard with the Defendant's insurer's vocational rehabilitation consultant to try to return to the labour market; the evidence those attempts to find work generated of overt disability discrimination by prospective employers was arresting.

The issues between the parties revolved principally around the loss of earnings claim. The Defendant contended for a lower multiplicand and multiplier for the 'but for' scenario than the Claimant on the basis that he would likely have slowed down with age and retired from groundwork before his statutory retirement age. The Defendant also contended for a higher residual earning capacity and contended that the Ogden 8 Table B discount threw up an unrealistically low notional residual earning capacity.

Both parties moved away from their best case positions to achieve settlement through negotiation.

£550,000 settlement for a 40-year-old electrician who sustained a severe leg injury in a bicycle accident

30/07/2020

Barristers involved: Marcus Grant
A 40-year-old electrician recovered £550,000 in a negotiated settlement in respect of a leg injury sustained in a bicycle accident.

He sustained an 'open (compound) fracture dislocation of his left tibia and fibula with neurovascular compromise to the foot, a PTA kink inside the ankle joint, damage to the peroneal tendon, a Weber C fracture of the ankle and extensive degloving injuries over the left thigh and calf.'

He endured a long and painful period of rehabilitation following which, after the third anniversary of the accident, he managed to find full time lighter employment in South Wales where he lived.

The central issue between the parties concerned his notional earning capacity in the absence of the accident, because there were gaps in his work record for benign reasons (recovery from an earlier surgery and taking a year out to care for an elderly relative); also his residual earning capacity was nt agreed with the Defendant suggesting that he was not 'disabled' within the meaning of Ogden 8.

The settlement represented a compromise between the parties' respective best cases.

£2m settlement for a 48-year-old carpenter who sustained a severe leg injury leading to a delayed amputation in a workplace accident

27/07/2020

Barristers involved: Marcus Grant
A 48-year-old carpenter recovered £2m in a negotiated settlement in respect of a leg injury sustained in a workplace accident when he fell from a ladder and sustained a 'Hawkins Type 2 talar neck fracture'.

The fracture did not unite and caused significant pain exacerbated by weight gain and immobility.

A decision was taken at the 4th anniversary to undergo an elective transtibial amputation and to proceed in life with prosthetics and aids and equipment to enhance his independence as an amputee.

The settlement sum reflected that he was unlikely to recover any significant earning capacity by reason of his skillset, enduring obesity problems and his age.

The focus of the dispute between the parties' respective valuations was on his professed need for single level, wheelchair-compatible accommodation at some point in the future and the immediate need for a battery operated hydraulic prosthesis to be replaced at intervals together with back up and waterproof prostheses.

The settlement represented a compromise between the parties' respective best cases.

£350,000 settlement for a 60-year-old engineer who sustained a whiplash injury and a head injury that triggered epilepsy two years later

09/06/2020

Barristers involved: Marcus Grant
The Claimant was involved in a high speed rear end shunting accident. He developed a whiplash injury and on his case and moderate/severe TBI comprising microscopic diffuse axonal injury.

He reported a cluster of physical, vestibular, cognitive, behavioural and psychological symptoms commonly associated with a concussive head injury.

His GCS was normal, there was no recorded loss of consciousness and repeatedly normal CT and 3T MRI scans of his brain. Retrospective PTA assessment using the Rivermead protocol revealed surprising gaps in his memory of events over the 72 hour period after the accident.

Roughly 3 months after the accident he developed déjà vu episodes that were the precursor to his first grand mal epileptic seizure 25 months post-accident. Two further grand mal seizures followed and he was treated with powerful anti-epileptic medication which exacerbated his cognitive fatigue.

He continued to work full time over the 5 year period after the accident and the claim comprised his future reduced earning capacity, his past additional costs associated with a 1,000 day driving ban and future costs associated with a heightened chance of needed dementia care in later life.

The Defendant did not accept that there was any TBI. It contended that there was no association between a whiplash mechanism

and TBI. She contended that diagnosing a TBI purely by reference to a rPTA assessment was unsafe. She advanced a differential diagnosis of Functional Cognitive Disorder, notwithstanding no pre-accident history of psychological vulnerability, and notwithstanding the fact that C had battled on working full time with his symptoms.

The Defendant contended that the epilepsy was probably cryptogenic (i.e.: constitutional and coincidental) and the claim for a heightened risk of dementia care was not countenanced.

The claim was compromised part way between the parties' respective best cases through a structured negotiation.

£750,000 settlement for a 57-year-old dry liner who sustained a brain injury in a work place accident

08/06/2020

Barristers involved: Marcus Grant
The Claimant sustained a traumatic brain injury and orthopaedic injuries that left him with an enduring cluster of physical, vestibular, cognitive, behavioural and psychological symptoms.

His case was presented on the basis that the most debilitating feature of his enduring symptoms was a dysexecutive syndrome that made him unable to think laterally or cope well with stress or change, necessitating a degree of supervision and light touch prompting.

It was asserted that he would not be able to return to any remunerative employment, and that the level of dependence on his wife was unsustainable going forward and needed to be replaced by a case manager and a light touch support worker regime. Further, it was contended that he was at a heightened risk of dementing which would necessitate a more expensive care regime if the risk eventuated.

The Defendant accepted the technical severity of the brain injury but felt that his recovery was such that he ought to be capable of some remunerative employment following a short burst of case management and rehabilitation, but that there was no long term need for external care and that any claim for a heightened chance of dementia-induced future care was too remote and/or speculative.

A further issue in the case was whether it was acceptable for the Claimant to instruct a forensic account to reconstruct his pre-accident earning capacity from bank statements in the absence of satisfactory accounting records.

The claim was compromised part way between the parties' respective best cases through a structured negotiation.

£703,000 settlement for a 38-year-old personal shopper who sustained a lower leg injury in a running down accident evolving into a centrally-sensitised chronic pain condition.

23/05/2020

Barristers involved: Marcus Grant
The Claimant was involved in a running down accident causing a significant fibula fracture, ankle dislocation and a compartment syndrome. He had a poor outcome to surgery and was left with an antalgic gait exacerbated by a 20° equinus deformity. He developed symptoms of chronic pain in the leg and some psychological symptoms. His weight increased by 5–6 stone and his mobility was compromised leaving him with compromised stamina for activities of daily living including work and raising his children.

He brought a claim for lost earning capacity, the need for ongoing loss of services, a modicum of personal care and for facilitating single level accommodation.

The Defendant contested the extent of the alleged earning capacity, contending that he would not have earned as much as he claimed in the absence of the accident and that he was capable of earning more than he conceded going forward. It was asserted that he did not need any ongoing care and that he did not need single storey accommodation.

The claim was compromised part way between the parties' respective best cases through a structured negotiation.

£4.83m settlement for a 32-year-old charity worker who sustained severe leg injuries in a train accident

18/03/2020

Barristers involved: Marcus Grant
A 32-year-old charity worker recovered £4.83m in a negotiated settlement in respect of devastating leg injuries sustained in a train accident.

She was dragged along a train platform by a moving train after her rucksack became caught in the train's closing doors, and pulled out of the station without the driver realising what was happening. She suffered devastating leg injuries and secondary psychiatric injury. A failed tendon transfer left her with weakness in one of her shoulders.

One leg was amputated shortly after the accident and she battled to save the other leg over the five-year period after the accident. She elected to have that leg amputated shortly after the date of settlement.

The case was novel in that it addressed the viability of having the more expensive Empower prosthetics for a double amputee for the first time.

The case raised the usual arguments in amputation cases as to the need for motorized prostheses, and the reasonableness in expecting tortfeasors to fund them, given that they are significantly more expensive than non-motorised prostheses.

Questions arose with regard to life expectancy, need for bespoke accommodation, child care costs and an appropriate career model in the absence of the accident.

Judicial ruling on recording of expert appointments in injury claims

13/03/2020

Barristers involved: Marcus Grant
Martin Spencer J acknowledged that there was a need to record expert appointments in some higher value cases to protect litigants (mainly claimants) against experts who are 'incompetent or worse'. This case followed on from the decision in *Mustard v Flower.*

What are the practical implications of this case?
The practical implications of this case is that claimants will be permitted going forwards subject to the circumstances of the case, to record defendant medico-legal appointments (with the exception of the neuropsychometric testing element of neuropsychological appointments which requires additional safeguards), provided that they have first recorded their own experts of like discipline. They must disclose a copy of that recording with their experts' evidence, as part of their experts' evidence.

What was the background?
The claim arose out of an accident in 2016. The claimant sustained serious injuries including a traumatic brain injury which has led to neuropsychological deficits. The injuries were serious and the consequences are, to some extent or other, permanent.

In April 2019, the claimant was examined by a Dr Sembi. The defendant proposes to instruct a Professor Kemp to examine the claimant and carry out neuropsychological testing on him for the purpose of producing a report in answer to that of Dr Sembi.

In August 2019, the claimant's solicitor wrote to the defendant's solicitors explaining that the claimant/his mother had been advised to record his consultations with the defendant's medical experts as an aide memoire and to protect him against errors.

An order was sought allowing the claimant to record the examination by Professor Kemp and the neuropsychological testing which was strongly resisted by the defendant.

What did the court decide?

The court acknowledged that a recording of a medicolegal appointment was the best evidence as to what was, or was not said by both a claimant and an expert. The court observed that what went on at a medicolegal appointment was frequently a point of dispute between the parties. The court acknowledged that recordings obtained historically by claimants both covertly and overtly had shown a lack of competence on the part of experts that could have resulted in injustice without the recording.

However, the court was quick to emphasise that poor methodology on the part of an expert was not restricted to defendants' experts, and that if recording evidence is to be admitted into evidence, there needed to be a level playing field and transparency in which defendants should be able to review what was said during the claimants' expert appointments too.

The fact that an appointment was being openly recorded would likely eliminate much of the mischief underpinning the desire to record, in that the questioning would likely be fair, methodology sound etc. It was observed that in the vast majority of cases, the recordings would not need to be listened to because the 'vast majority of experts instructed are competent and honest'.

On the thorny question of recording neuropsychometric testing, which involves use of proprietary testing material that would lose its value if it fell into the public domain, the court found that additional safeguards would need to be implemented to avoid that happening. The court was informed that the British Psychological Society's Division of Neuropsychologists was contemplating instituting a blanket prohibition of recording of medicolegal neuropsychometric testing. The court ruled that such a blanket prohibition would be 'disappointing' given that recordings had revealed a 'lack of competence of certain experts instructed in this field'.

Finally, the court indicted that it was reluctant to provide any 'ex cathedra guidelines or instructions' given that it was aware that the joint working party of APIL and FOIL was working through these issues to come up with a solution which satisfies the interests of justice from the point of view of both claimants and defendants.

£2.145m settlement for a 32-year-old hotel manager who developed chronic pain in his left arm following a whiplash injury.

24/02/2020

Barristers involved: Marcus Grant
A then 27-year-old hotel manager sustained a whiplash injury in a road accident in which his vehicle was hit from the front imposing violent deceleration forces to his spine. He stretched out his left arm across his front seat passenger during the accident, which was not sufficient to activate his car's airbags or prevent the car being driven c. 1 hour home.

Over the ensuing hours and days he developed acute neck pain with referred symptoms down the arm; x-ray, MRI and nerve conduction studies over the following weeks were all normal. The pain persisted and over the ensuing c. 5 + years he presented at intervals with symptoms of CRPS and lost much of the use of the arm.

It was his case that he sustained a mild stretching traction injury to the brachial plexus sufficient to generate chronic pain in a narrowly confined distribution, insufficient to leave any diagnostic footprint on scanning.

Subsequently he developed moderately severe clinical depression as a consequence of the enforced lifestyle changes. These included having to abandon his career and his aspirations to study for an MBA and thereafter continue his career in the US.

He had undergone all appropriate treatments for his condition and the prognosis for any significant recovery 5+ years later was gloomy.

The Defendant's expert team was skeptical that there was any underlying organic pathology to explain the presentation, in large part because there was a two day delay in the documented report of any brachial plexus symptoms, which the Defendant averred would have been experienced immediately.

The Defendant disavowed the diagnosis of CRPS, attributing any physical manifestations associated with that diagnosis to disuse of the limb.

Having invested huge sums in surveillance evidence of the Claimant over 22 days across the course of three years in the UK, US and Greece, the Defendant advanced a differential diagnosis of Somatic Symptom Disorder to explain the Claimant's presentation,

averring that the litigation was a principal maintaining factor and that the prognosis post-litigation was optimistic. The Defendant also suggested an element of exaggeration, though was unsure whether it was conscious or unconscious.

The Defendant requested permission to rely on expert neurological evidence to supplement his shoulder expert.

The Claimant's neurological expert was able to demonstrate that a delayed onset of brachial plexus symptoms in cases where there was a stretching of the brachial plexus was common, with the mean time of onset being 6 days post-trauma in a prospective controlled 2001 study of 121 patients. The Claimant's neurological presentation past the 5th anniversary of the trauma fitted with the diagnosis provided by his medico-legal peripheral nerve surgeon.

The case settled through negotiation against that evidential matrix.

£1.146m settlement for a 41-year-old Warehouse worker who suffered a brachial plexus injury in a motorcycle accident

06/02/2020

Barristers involved: Marcus Grant
He underwent two surgeries to effect a tendon transfer in an attempt to recover some of the lost movement in the arm; the surgeries failed and resulted in him developing acute abdominal infections which left him in a critical state for over 12 months.

The case was rendered more difficult to value because of a congenital immunodeficiency disorder that had implications to his life expectancy, and to his ability to his ability to have worked through to retirement age in the absence of the accident. Also he was a brain injury survivor having sustained a very severe TBI 20 years earlier.

He intimated a claim for MyoPro orthoses from the US to provide greater function to his flail arm, which was a novel head of claim in the UK.

In addition the Defendants maintained allegations of contributory negligence.

The case settled through negotiation against that evidential matrix.

£1.165m settlement for a 43-year-old social worker who developed fibromyalgia following two road accidents

22/01/2020

Barristers involved: Marcus Grant
She sustained soft tissue injury to her spine (a 'whiplash associated disorder') following the first accident, a rear end shunt, which also caused her a loss of restorative sleep. Over the ensuing 6-8 weeks the nature of the pain became more widespread and diffuse and was accompanied by a flu-like malaise and headaches. She was unable to continue her work and her mood became depressed. By the 6th month anniversary her GP began to suspect fibromyalgia and referred her to a rheumatologist.

Before she saw the rheumatologist the second accident happened. It was objectively more serious and more frightening than the first. It caused a significant flare in her centrally sensitized chronic pain symptoms and PTSD. Her already fitful sleep patterns became further fragmented and she descended into a deep depression and became sufficiently dysfunctional that she was forced to abandon any attempt at work and required assistance from Social Services to run her domestic activities, to include caring for her children.

She underwent an array of bespoke treatments for fibromyalgia and depression and PTSD but was left past the 6th anniversary with enduring disabling symptoms. She brought a claim for compensation for the consequences of post-traumatic fibromyalgia.

The defendants (represented by the same legal team) instructed a team of experts who disavowed the diagnoses of fibromyalgia and/or post traumatic fibromyalgia and suggested that her presentation was a product of probable prior psychological vulnerability, a somatic symptom disorder and exaggeration, either conscious or subconscious. The defendants asserted that domestic or personal care with aids and appliances were contra-indicated and would merely reinforce a sense of disability that was entirely

psychological. They anticipated a swift and full recovery post litigation with the assistance of an individualized programme of psychiatric and psychological intervention and that she would likely make a full recovery within 2 years.

The case settled through negotiation against that evidential matrix.

£700,000 settlement for a 51-year-old man who sustained a brain injury in a bicycle accident approved by Master Cook

14/11/2019

Barristers involved: Marcus Grant
It took the Claimant 4 years to secure a liability compromise 99% in his favour before any rehabilitation could commence.

He was left with acute fatigue and a reduced ability to cope with hassle and reduced motivation and heightened anger. He was unable to return to his career, but his loss of earnings was militated by a generous PHI policy paying 75% of his salary at the time of the accident.

The battleground between the parties was whether so many years post-accident he needed, or would accept a comprehensive support package comprising a head injury trained case manager and some support worker involvement for the rest of his working life.

A further issue between the Parties was whether there was a heightened dementia risk in old age and, if so, whether it should be quantified now on a chance basis rather then tied up on a provisional damages award.

It was agreed that he had borderline capacity with the presumption of capacity provided under the mental Capacity Act 2015 preserved.

The parties negotiated a compromise of these issues with a lump sum award of £700,000.

The Defendant asked for the settlement to be approved by a Master by reference to the Court's inherent jurisdiction under s. 19(1) of the Senior Courts Act 1981, applying the principle established by Teare J in Coles v. Perfect [2013] EWHC 1955, notwithstanding the fact that the presumption of capacity was not displaced.

Master Cook acceded to that request and approved the settlement.

£4m settlement for a 35-year-old man who sustained a dysexecutive syndrome in a road accident

06/11/2019

Barristers involved: Marcus Grant
The Claimant sustained multiple injuries. Most of which progressed to full, or nearly full resolution with the exception of a dysexecutive syndrome pursuant to frontal lobe damage. Whilst his neuropsychological test scores were more or less normal, he presented with symptoms of a personality change.

He appeared to be relatively intact and functioned well in predictable and consistent environments which placed low demands upon him. However, as soon as any situation became more demanding or less predictable, or he was required to think on his feet, even in relatively mundane tasks, his dependence and inability to function independently became apparent. His lack of insight and judgement, anger, irritability, depressive, anxious and other symptomatology, hypersexuality, disinhibition and apathy underscoring his dysexecutive syndrome necessitated an ongoing support in his life.

The cost of that support would be significantly higher if his marriage were to fail.

The issues between the Parties were his employment prospects in life before the accident, the stability of his marriage, the level of support that he needed or would accept, whether he needed larger accommodation to meet his needs, his life expectancy and his

increased risk of dementia.

The case settled three months before trial through negotiation against that evidential matrix.

Judicial ruling on admissibility of covert recordings in injury claims

11/10/2019

Barristers involved: Marcus Grant
Master Davison handed down a detailed judgment on the admissibility of covert recordings, including recording of neuropsychological testing in a head injury case.

The Claimant recorded her appointments with all six of the Defendant's experts, four overtly and two covertly. She was asked to stop the recording of the neuropsychological appointment part way through the neuropsychological testing, attempted to do so but, in fact, failed to do so.

The Claimant's neuropsychologist reviewed the recording of the Defendant's neuropsychological appointment and observed significant deviations from correct procedure and was critical of her technique and methodology. The Defendant's neuropsychologist relied in part on her test scores in reaching her formulation that characterised the Claimant in terms that stopped just short of an allegation of outright dishonesty.

The Defendant accepted that all six recordings were relevant and probative to issues in the case in that they raised legitimate questions of the experts, but nevertheless asked the Court to refuse the Claimant permission to rely on them because they were illegal because they breached the GDPR and the DPA 2018, because they were unfair as the Claimant had not recorded her own experts and because they were discourteous to the experts. One expert reported that she felt "professionally violated, distressed, angry and disillusioned" by the recording.

The Court rejected the Defendant's submissions, finding that the recordings were not unlawful, that they did not breach the GDPR or the DPA 2018 and that the Overriding Objective clearly favoured admitting the recordings into evidence, subject to providing safeguards that the recording of the proprietary test materials of the neuropsychological testing did not enter the public domain.

The Court found that the Claimant's motives for wanting to record the Defendants' appointments were "in the context of adversarial litigation, understandable" and found that " Whilst her actions lacked courtesy and transparency, covert recording had become a fact of professional life".

The Court picked up on, and commended to the legal profession, a suggestion from Claimant's Counsel in submissions:

"the sooner that there can be some kind of protocol agreed between the Association of Personal Injury Lawyers and the Forum of Insurance Lawyers which governs the recording of medico-legal examinations the better. It is the interests of all sides that examinations are recorded because from time to time significant disputes arise as to what occurred"

The Court was critical of a series of Part 35 Questions asked of the Defendant's experts on the grounds that they were disproportionate and overwhelmingly not for the purposes of clarification and amounted to cross-examination.

A copy of the judgment can be found here.

Marcus Grant spoke at the Peterhouse Medico-legal Conference 2019

27/09/2019

Barristers involved: Marcus Grant
Marcus was invited to present on the subject of the use of covert recordings of medico-legal appointments in injury and clinical negligence litigation.

The use of covert recording is widespread in family law and also prevalent in employment and commercial law cases. It has proved

in the past to be decisive in the outcome of injury litigation in resolving misunderstandings between patients and experts, exposing variations in experts' methodologies often resulting in different conclusions, and occasionally exposing poor practice that has been critical to the outcome of the cases.

In a world where claimants are placed under increasing scrutiny by insurers with covert surveillance, either carried out by operatives of by static cameras strategically placed, and subjected to the intrusion of having their social media footprint monitored by insurers, and where allegations of fundamental dishonesty have tilted the playing field heavily in defendants' favour in litigation, often recordings of exchanges between claimants and defendant-instructed medical experts represent a last line of defence for claimants who feel their words have been misrepresented or misinterpreted.

Marcus' presentation considered the implications of the GDPR, now codified within the Data Protection Act 2018, and considered the special considerations that need to attach to any recording of neuropsychological testing to ensure that safeguards are put in place to preserve the proprietary material of the test wording.

The talk generated lively debate at the conference amongst the delegates who were roughly 50% lawyers and 50% medical experts.

At the end of the segment, roughly 50% of the doctors voted in favour of recording of medico-legal appointments and a strong majority of the lawyers voted in favour of it.

The proposal from the speaker was that APIL, FOIL and PIBA should participate in a protocol where in all cases involving damages in excess of £200,000, overt records of each appointment, both claimant and defendant (but excluding neuropsychological testing) should be served with each report. The very existence of such a recording would eliminate most of the poor practice underpinning the trust issues that currently characterise this area of law.

Marcus' talk can be accessed here.

£1.46m gross settlement for a 46-year-old professional driver who sustained a concussive head injury in a bicycle accident

04/07/2019

Barristers involved: Marcus Grant
His bicycle was struck from behind by a car travelling in excess of 50 mph causing him to be thrown into an embankment, rendering him unconscious for c. 15 minutes and leaving him with a reduced GCS of 13/15 for the first 45 minutes after the accident.

He was left with a syndrome of physical, cognitive and behavioural symptoms that his expert team attributed to microscopic diffuse axonal injury to the white matter pathways within the brain, leaving him, inter alia, with a damaged judgment centre and acute cognitive fatigue. Also he sustained damage to his balance apparatus leaving him with enduring impaired balance and intermittent vestibular migraines. He also suffered mild PTSD and depressive symptoms, all of which remitted with in vivo exposure therapy and CBT.

His case was advanced on the basis that he would never work again and that he would need light touch case management and some support worker assistance to cope with independent living. He lived with his retired parents since the accident.

The Defendant's experts were more cautious about a diagnosis of diffuse axonal injury in the absence of macroscopic corroboration on MRI and rejected any suggestion of brain injury. They considered that his enduring subjective cluster of symptoms was attributable in part to pre-morbid vulnerability and personality traits and in part were being maintained by psychological factors, and that any damage to his vestibular system was amenable to treatment, such that with the litigation behind him he would be able to live independently with external support and may even achieve some residual earning capacity.

The case settled through negotiation against that evidential matrix.

£700,00 net settlement for a 48-year-old University Lecturer who sustained a concussive head injury in a bicycle accident

28/06/2019

Barristers involved: Marcus Grant
He fell from his bicycle at a speed of < 10 mph when a car pulled across his path. He landed on his back with the back of his head also striking the road. He was concussed but suffered no loss of consciousness and his GCS remained normal throughout and head scans were normal. However, there was evidence of PTA consistent with a mTBI on the basis of his experts' evidence. He developed anxiety triggers fulfilling the diagnostic criteria of PTSD. Also, he sustained a thoracic compression fracture that was not a source of disability beyond the sub-acute phase of his recovery.

This apparently mild TBI had a marked effect on his ability to operate at a high intellectual level over sustained periods as a university lecturer and researcher. This was illustrated by the pattern of his neuropsychological test scores that indicated that he was operating in the 'high average' or 'superior' domains across all indices save for processing speed which was c. 40 points below his full scale IQ.

He struggled on in academia, attempting to buffer the physical, cognitive, behavioural and psychological changes brought about by the concussive head injury for a period of c. 3½ years before going off work and being forced out of his profession.

The Claimant's experts explained this presentation as the neuro-psychiatric complications that sometimes accompany a small minority of mTBI patients throughout the chronic phase of their recovery leaving them with lasting disability. The mTBI in question was microscopic diffuse axonal injury.

The Defendant's experts observed that the pattern of dysfunction, i.e. symptoms deteriorating over time, contraindicated any significant organic brain injury and considered the presentation was entirely psychologically mediated and contributed to significantly by stressors unrelated to the consequences of the accident.

The case settled at the above level 4 weeks before trial through negotiation.

£700,000 settlement for a 42-year-old railway worker who sustained a mild traumatic brain injury and neuropsychiatric sequelae in a workplace accident

29/03/2019

Barristers involved: Marcus Grant
A 42-year-old railway worker recovered £700,000 in a negotiated settlement in respect of a concussive head injury which led to neuropsychiatric complications. The mechanism of injury was being struck in the face by a falling scaffolding pole resulting in orbital fractures and PTSD.

One of those complications was alcohol dependency, a problem that manifested and progressed after the insurer's withdrawal from the rehab code left him homeless and living rough.

Further complications thrown up by the facts of the case included a prior peripatetic work history, a previous injury claim for chronic pain and PTSD in an earlier workplace accident and volatile contact proceedings with an ex-partner that pre-dated the accident. He also had a caution for being in possession of a controlled substance in the year of his accident.

His case was predicated on the basis that there was a neurological substrate to the enduring neuropsychiatric presentation, which provided for a gloomy prognosis past the 6th anniversary of the accident.

The Defendant's case was at variance to this, asserting that the accident had not changed the trajectory of his life materially; he was destined to become dysfunctional in the workplace and to have a chaotic private life and he always had a tendency to alcohol dependency.

The £700,000 settlement reflected a compromise between the Parties' respective positions.

Three members of TGC invited to speak at the PIBA Conference

25/03/2019

Barristers involved: Marcus Grant Emma Northey Elizabeth Gallagher
Three members of Chambers were invited by the Personal Injury Bar Association [PIBA] management committee to speak to c. 250 of their peers at the annual conference at St Catherine's College, Oxford.

Marcus Grant spoke about the impact of Section 69 of the Enterprise & Regulatory Reform Act 2013 on litigating employer's liability accident at work claims 5½ years since it came into force, following on from the High Court case of Cockerell v. CXK Limited & Artwise Community Partnership [2018] EWHC 1155 in which he appeared – see link below.

Emma Northey spoke on the law surrounding driverless vehicles delivering a presentation entitled: "Thoughts on the direction of travel for common law Civil Liability and statutory Product Liability in an increasingly automated world".

Elizabeth Gallagher spoke alongside Theo Huckle QC and Denise Owen on Wellbeing at the Bar.

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

Martin Spencer J approves a £1.84 m settlement for a 45-year-old man who suffered a ceiling collapse on his head

05/03/2019

Barristers involved: Simon Browne QC Marcus Grant
C was aged 39 at the time of the accident. He was the principal breadwinner for his family. He had a pre-accident history of psychological vulnerability and a period of alcohol dependency a few years before the accident.

After the accident he developed a cluster of symptoms that included impaired memory, heightened fatigue and irritability and impaired balance coupled with headaches and tinnitus. He attempted to continue working for roughly a year after the accident in a demanding job. From the anniversary of the accident his condition deteriorated as he became increasingly isolated from the world around him. He gained weight, developed tics and a speech and movement disorder and his ability to mobilise was significantly compromised by impaired balance and obesity.

A prolonged period of in-patient treatment in a head injury unit failed to break the deadlock in his symptoms. The principal diagnoses to explain his presentation were functional neurological disorder compounded by the consequences of a concussive head injury, probably including an element of DAI and damage to his peripheral vestibular system.

On his case, the prognosis was very guarded and he needed support from a case manager and a support worker and lacked capacity to litigate.

The Defendant was suspicious of C's presentation throughout and found it hard to attribute his florid presentation to the objectively modest blow to his head. It attributed his presentation in part to prior vulnerability and questioned whether there was a volitional element to his presentation; whatever, the precise aetiology of his cluster of symptoms, the Defendant was optimistic that there was a good chance of a full recovery with treatment outside the constraints imposed by the litigation. The Defendant did not accept that the presumption of capacity was displaced.

The settlement reflected a compromise between the Parties' respective positions.

£3.1m settlement for a 24-year-old lady who sustained a brachial plexus injury and a concussive head injury in a car crash

01/03/2019

Barristers involved: Marcus Grant
A 24-year-old lady recovered £3.1m in a negotiated settlement in respect of a brachial plexus injury and a concussive head injury sustained in a car crash.

She was the front seat passenger in a head on car crash at the age of 18. Four years earlier she sustained a severe brain injury in a riding accident that left her with a residuum of cognitive symptoms and a mild left sided hemiparesis.

On her case, she sustained a brachial plexus injury and a further brain injury, that was at least 'mild', and possibly 'moderately severe' in terms of technical severity, but which had a disproportionate impact on her mental stamina and cognitive and executive functioning because of the cumulative effect of successive head injuries. Her problems were compounded by the significant deficits from the brachial plexus injury. The bulk of her claim arose from her care needs and lost earning capacity.

The Defendant did not accept that she had sustained any significant brain injury and sought to attribute the bulk of her subjective report of compromised cognitive function and reduced mental stamina to the consequences of the earlier riding accident. It sought to argue that she did not need extensive support from a support worker or from a nanny in due course and that there was no need for enduring case management.

The £3.1m settlement reflected a compromise between the Parties' respective positions.

Dingemans J approves a £4.68m settlement for a 26-year-old motorcycle head injury crash victim – 16.11.2018

03/12/2018

Barristers involved: Marcus Grant
Dingemans J approved a £4.68m settlement for a 26-year-old motorcycle head injury crash victim who was left with enduring behavioural symptoms when he was aged 20. Marcus Grant represented the Claimant.

The Claimant was an apprentice vehicle diagnostician when he had the accident. On his case, the legacy of his technically 'severe' TBI was a dysexecutive syndrome that affected his judgment centre. His neuropsychological test scores were unremarkable; however, six years later, after the benefit of neurological rehabilitation, he was unable to hold down remunerative employment by reason of his dysexecutive presentation. He needed support from a Case Manager and Support Workers to supplement the gratuitous assistance he received from his wife and mother. On his case, his dysexecutive syndrome displaced the presumption of capacity to litigate and manage his financial affairs. Further, on his case, there was no scope for further improvement and he faced a heightened risk of dementia and marriage breakdown.

The Defendant challenged whether he had a dysexecutive syndrome at all, suggesting that his behavioural issues were mediated largely by pre-existing personality traits and post-accident psycho-social stressors overlaying a brain injury from which he had made a good recovery. The Defendant contended that he was capable of learning strategies from his support workers to cope with much greater independence in life, even to the point of possibly managing some low-grade part time remunerative employment. The heightened risk of dementia and marriage failure were denied. It was contended that the presumption of capacity was not displaced.

The settlement reflected a compromise between the Parties' respective positions.

50-year-old sales manager recovered £1m in respect of losses flowing from chronic pain and PTSD sustained in a road accident

22/11/2018

Barristers involved: Marcus Grant
She was left with chronic pain and sub-clinical psychological symptoms that compromised her physical stamina for full time work and for maintaining her substantial house and garden. Her partner died in the accident.

After several years of rehabilitation for the acute effects of her injuries, she found herself part time work, and asserted that her enduring symptoms prevented her from returning to her pre-accident levels of function at home and in the work place.

The Defendant challenged to the top line of her loss of earnings claim, as to how much and how long she would have earned her pre-accident salary in the absence of the accident; also, he challenged the modest level of her residual earning capacity, contending that she could earn more. A late application by the Defendant 4 months before trial to adduce employment evidence to

bolster that assertion was dismissed.

The case settled through negotiation 7 weeks before trial part way between the Parties' best positions.

47-year-old senior manager recovered £675,000 in respect of a soft tissue neck injury sustained in a road accident

21/11/2018

Barristers involved: Marcus Grant
She was left with a narrowly defined area of chronic pain over the left side of her neck that became progressively more intrusive following prolonged periods of sitting at a work station in an office environment. She found that she needed to lie down to take the weight of her head off her shoulders every few hours to relieve the build-up of pain. These symptoms of chronic pain proved to be resistant to several courses of different chronic pain treatments, and she was left to manage the symptoms with pacing strategies that involved having short periods of rest lying down throughout each working day.

She felt unable to cope with her demanding office role and instead set up in business as a personal trainer instructing clients with injuries or vulnerabilities. In that role she was able to control her postural and physical activity levels and able to lie down and rest when required.

The agreed medical evidence was that she probably could cope once more in a full time office role, provided that she could find a sympathetic employer prepared to make some adjustments. She would be unlikely to operate at her pre-accident level of responsibility or earnings.

She presented her claim on the basis that it was reasonable for her to have made her career choice to move from better paid office work to less well paid personal training work providing her with certainty and control over her coping strategies for the enduring symptoms.

The Defendant contended that her decision to work as a personal trainer was a lifestyle choice and not attributable to the accident and challenged both the top and bottom lines of her loss of earning capacity claims.

The case settled through negotiation shortly before trial part way between the Parties' best positions.

44-year-old café proprietor recovered £250,000 in respect of a mild traumatic brain injury and chronic pain sustained in a road accident

16/11/2018

Barristers involved: Marcus Grant
He was left with a syndrome of physical, cognitive, behavioural and psychological symptoms that restricted his stamina for functioning effectively in the workplace and in the home. He presented with several seizures treated by the NHS with anti-convulsants but probably non-epileptic in origin and psychiatrically mediated. He continued to complain of intrusive neuropathic pain that was treated with powerful opiates (Morphine Sulphate initially followed by Oxycodone). The side effects of the addictive medication soon became the principal maintaining factor to his enduring symptoms. He developed an addiction to the Oxycodone, the side effects from which included acute fatigue that so compromised his cognitive function and stamina in the café he ran with his wife.

He had no track record of deriving any income from the café business over several years before the accident and had difficulty demonstrating an obvious loss of earning capacity by reason of his injuries.

He required multidisciplinary treatment and the consensus amongst the medical experts was that his prognosis with optimum treatment was optimistic, provided he could be weaned off the Oxycodone, and that he ought to be fit enough to return to full time manual work if he so chose within 12 months of settlement.

The settlement reflected the fact that the prognosis, whilst broadly optimistic, was far from certain and that there was a complex interplay between the enduring MTBI symptoms and the chronic neuropathic pain, each representing a poor prognostic indicator to

the other.

31-year-old highway worker recovered £643,000 in respect of a brachial plexus injury and head injury sustained in a motorcycle accident where liability was contested

24/08/2018

Barristers involved: Marcus Grant
It was common ground that C was riding his motorcycle too fast through a residential street in Ipswich, subject to a 30 mph speed limit, when D, travelling in a car in the opposite direction, turned right across his path. It was common ground that D did not see the motorcycle before impact.

Reconstruction experts were not agreed on C's speed prior to braking. C's expert estimated it to have been c. 45-50 mph; D's expert's estimate was in excess of 65 mph.

Recent case law in June 2018 from the QBD in Macpherson v. Smith [2018] EWHC Civ 1433 suggested that the range of contributory negligence against C was likely to be between 50% and 75% depending upon which reconstruction expert's evidence was preferred.

The case settled through negotiation part way between the Parties' best positions.

61-year-old construction worker recovered £495,000 in respect of a head injury sustained in a workplace accident

08/08/2018

Barristers involved: Marcus Grant
His case was that he had developed a disabling syndrome of physical (including vestibular), neuro-cognitive, neuro-behavioural and psychological symptoms attributable to the original accident, that he was permanently unfit for work and needed a burst of case management and support worker assistance and some light touch case management thereafter, together with a heightened risk of dementia and a reduced life expectancy.

C's case was not accepted by the D who considered the severity of any head injury to be minimal, notwithstanding the confirmed epilepsy, and that any enduring symptoms (to the extent that their self- report was reliable) were largely psychologically mediated and would resolve swiftly following the conclusion of the litigation and receipt of some CBT such as to enable C to return to some level of remunerative employment. D placed considerable emphasis on failure of effort testing with its neuropsychological expert which was evidence of a measure of conscious exaggeration. It denied any need for case management, support workers or heightened dementia risk.

The case settled through negotiation part way between the Parties' best positions.

A 34-year-old English teacher working in China recovered £535,000 in respect of a head injury sustained in a road accident

25/07/2018

Barristers involved: Marcus Grant
Notwithstanding his injuries, four years after the accident he studied an MBA in London. His case was that the enduring syndrome of symptoms compromised his mental stamina for full time employment, or employment involving significant responsibility and exercise of judgment.

The Defendant considered that C had made a good recovery from the effects of his head injury, as evidenced by his ability to study for an MBA and observed that there was little objective evidence of any of the enduring symptoms of which he complained and the trajectory of his presumed earnings in the accident was far from clear given his peripatetic pre-accident pattern of earnings.

The case settled through negotiation part way between the Parties' best positions.

50-year-old factory worker recovered £375,000 in respect of a head injury sustained in a workplace accident

23/07/2018

Barristers involved: Marcus Grant
He was unusually vulnerable to the cumulative effects of head injury having sustained a serious brain injury as a child and a further significant head injury as a young adult. He was left with some enduring cognitive deficits from these head injuries which limited the type of work he could do before the index accident.

The accident objectively was an innocuous incident but triggered a disabling syndrome of physical (including vestibular), neuro-cognitive, neuro-behavioural and psychological symptoms that precluded him from being able to work beyond the 20th month anniversary of the accident (he struggled on in his work until that point and was then made redundant for reasons unrelated to the head injury). He needed external assistance from a case manager and a measure of light touch support worker involvement. Whilst he was vulnerable to the cumulative effects of head injury, his case was that he was functioning well before the accident and it was responsible for the syndrome of symptoms that followed.

D denied liability. It also denied any significant head injury beyond a mild concussion and rejected the suggestion that the accident was the trigger for a deterioration in his presentation. The fact that he was able to continue working for 20 months contraindicated any significant injury and the presentation was largely explicable by psychological processes in relation to stressors unrelated to the accident.

The case settled through negotiation part way between the Parties' best positions.

A 51-year-old unemployed lady recovered £1.7m in respect of a leg injury sustained in a road accident

18/07/2018

Barristers involved: Marcus Grant
She lived in a Grade 2 listed house that was unsuited for her mobility needs and could not be altered to accommodate them easily. The bulk of her claim comprised claims for care and equipment and alternative accommodation. She brought her accommodation claim relying on the principles in George v. Pinnock.

The claim was defended on the basis that further recovery was likely that would eliminate much of the claimed care, equipment and accommodation claims.

The case settled through negotiation part way between the Parties' best positions.

A 41-year-old nurse recovered £672,000 in respect of a centrally sensitized chronic pain condition that developed following a low speed rear end shunting road accident causing soft tissue injury

13/07/2018

Barristers involved: Marcus Grant
It was common ground between the Parties that any orthopaedic soft tissue injury sustained in the accident was short lived and that her presentation was maintained solely by psychological factors.

The critical issues in the case were related to causation and quantification, principally her vulnerability to developing an equivalent condition in the absence of a compensable adverse life event, prognosis and need for a care regime.

On the face of her clinical history C did not appear to be unduly vulnerable psychologically to life's adverse events. However, she had suffered a catastrophic response following the accident and, 5 years later, was mobilising over short distances with crutches or in a wheelchair.

C's experts were gloomy about her prognosis; D's experts were optimistic about her prognosis, contending that the litigation was a significant impediment to her recovery; further, D asserted that a significant care regime was contraindicated by the condition.

The case settled through negotiation part way between the Parties' best positions.

A 59-year-old self-employed taxi driver recovered £500,000 in respect of an ankle injury that progressed into CRPS following a tripping accident

11/07/2018

Barristers involved: Marcus Grant
She received optimum treatment for the CRPS which did not allay her symptoms. She developed significant body dysmorphia and was unable to work and needed some assistance at home; also, her two storey home was unsuitable for her compromised mobility needs. An accommodation claim was brought relying on George v. Pinnock.

The case was defended on the basis that she had made a good recovery by about the 2nd anniversary of the accident when she was initially discharged from the specialised CRPS team at the RNOH and that her presentation to D's experts thereafter was contaminated by conscious exaggeration.

The case settled through negotiation part way between the Parties' best positions.

A 55-year-old benefits assistant recovered £400,000 net of CRU and interims in respect of a centrally sensitized chronic pain condition (diagnosed as 'fibromyalgia') that developed following a rear end shunting road accident causing soft tissue injury

07/07/2018

Barristers involved: Marcus Grant
On her case the chronic widespread pain emerged over the course of 6 months following the road accident, the mechanism being pain-induced sleep disturbance.

The enduring symptoms at the 4th anniversary of the accident were sufficient to prevent her from working and in need of some care and assistance at home, which had been provided by her husband.

The claim was defended on the basis that the mechanism of the chronic widespread pain was rejected, and that the symptoms were probably a manifestation of psychological vulnerability that pre-dated the accident; further, that the litigation had sought to maintain the intensity of the symptoms that would likely recede with appropriate psychologically based treatment and that the provision of care was contraindicated by the condition which required her to keep active and to be self-caring.

The case settled through negotiation part way between the Parties' best positions.

A claimant teacher failed to discharge the burden of proof that the syndrome of enduring symptoms she reported to the medico-legal experts was attributable to diffuse axonal brain injury caused in a rear end shunting accident and fails to recover damages for her lost career in teaching

06/07/2018

Barristers involved: Marcus Grant
The defence asserted that this diagnosis was improbable, pointing to the fact that no subjective cognitive, behavioural or psychological complaints were recorded in the A&E notes when assessed for a whiplash injury 2 hours after the accident, an occupational health doctor's assessment for possible stress at work c. 6 weeks post-accident, a medico-legal GP's assessment c. 6 months post-accident or a physiotherapist's assessment for treatment of the effects of her whiplash injury c. 12 months post-accident.

Whilst accepting that there was no psychological explanation for the enduring syndrome of symptoms and no non-DAI neurological

explanation, the defendant through her experts did not proffer any alternative clinical or non-clinical explanations for the reported syndrome of symptoms. The Defendant's experts accepted that the reported syndrome of symptoms was consistent with DAI, but was unlikely to be DAI attributable to the index accident because of the absence of cogent contemporaneous recording of the symptoms.

Whilst the Court (HHJ Saggerson sitting as a Judge of the High Court) found C unreliable as a witness with regard to aspects of her recollection regarding the nature and effect of the impact of the syndrome of reported symptoms in the early post-accident period, it found that she was not dishonest and that her report and presentation of symptoms was not coloured by malingering or conscious exaggeration.

The Court accepted that in addition to sustaining a significant whiplash injury that left C with permanent nuisance-level symptoms, she sustained some psychological injuries in the form of sub-clinical PTSD and OCD which were successfully treated by the 3rd anniversary of the accident.

It found that she had failed to discharge the burden of proving her claim of diffuse axonal injury, following the dicta in Pickford v. ICI [1998] 1 WLW 1189 and Newman v. Laver [2006] EWCA Civ 1135 in resolving an injury claim on the basis of burden of proof, without making any finding as to the probable explanation of C's presentation of enduring symptoms.

C's damages were assessed in the sum of £41,250.

Permission to appeal the Order has been sought from the Court of Appeal.

A 54-year-old ex-head teacher settled his stress at work claim for a six-figure sum on the eve of trial, 6 years after his employment was terminated

01/06/2018

Barristers involved: Marcus Grant
On his case he had been exposed to an unsatisfactory system of work that required him to assume a disproportionate workload in a failing comprehensive school without sufficient support from his LEA, that resulted in him developing psychological illness that elevated the risk of cardiac arrest, a risk that eventuated some 3½ years after his employment as a head teacher was terminated.

The claim was defended on the basis that there was no breach of any duty of care, and insufficient knowledge that the system of work was hazardous to his health, and that irrespective of any alleged breach of duty, it was not causative of his ill health which was probably attributable to unrelated lifestyle factors.

The case settled on the eve of trial between the Parties' best positions.

A widow was awarded £101,514 on behalf of the estate of her late husband who was killed in a running down accident

23/05/2018

Barristers involved: Marcus Grant
At the time of the accident C was in the process of divorcing her husband for infidelity after being a couple for > 27 years and married for 10 years; they were living apart and she had already obtained a decree nisi.

The two principal issues at trial were whether or not the deceased was guilty of any contributory negligence and whether C could establish a real (as opposed to a fanciful) chance of a dependency based on the marriage being salvageable in the absence of the accident. The central point of evidence with regard to the latter was whether, once C had received advice about the financial ramifications of proceeding to a decree absolute, a decision that would have left her financially unsupported by her husband after the age of 52 (her youngest child's 18th birthday and 5 years post-accident) C would have reconsidered her decision to divorce and elected to remain in the marriage (her late husband wanted to save the marriage).

After a two-day trial, C won the first issue (no finding of contributory fault was made) but lost the second issue (the Court finding that the chance of the marriage being saved was fanciful (Davies v. Taylor [974] AC 207 followed).

A claimant who developed CRPS following a tripping accident in the course of her employment failed to establish a claim against her employer or against the occupier of the premises where she sustained injury

17/05/2018

Barristers involved: Marcus Grant
C failed to see a steep step in a Victorian-era constructed community centre, tripped and fell sustaining an ankle injury which developed into debilitating CRPS.

She was employed by D1 as a Career's Adviser and instructed to attend D2's premises to provide a lecture. Upon her arrival at the premises for the first time, C walked through an open doorway into kitchen area without realising that there was a step down the other side of the doorway. She tripped and fell.

D1 failed to risk assess the building before the accident. D2's risk assessment provided three control measures for the risk posed by the step: (1) black and yellow hazard warning tape across the width of the lip of the step; (2) an instruction to all users that the door should be kept closed at all times; & (3) a prominent warning sign of the existence of the step on the door.

At the time of the accident one of D1's servants or agents allowed the door to be propped open, having not been instructed by D2 that this should not happen, thereby depriving C of the benefit of control measures (2) and (3) above.

The Court (Rowena Collins-Rice sitting as a Judge of the High Court) found that the existence of control measure (1) the hazard warning tape was, on the facts of the case, sufficient to discharge any common law duty of care owed by the employer, D1 to C (Section 69 of the Enterprise and regulatory Reform Act having deprived C of any statutory causes of action against her employer) and equally sufficient to discharge D2's statutory duty of care to take reasonable steps to safeguard visitors under Section 2 of the Occupiers Liability Act 1957.

Statutory appeal against a Regulatory Authority's decision to strike a psychologist off the HCPC register is dismissed

10/05/2018

Barristers involved: Marcus Grant
Marcus Grant, instructed by Christopher Dickinson of Dickinson Solicitors Limited, appeared for the Appellant psychologist in appealing a decision of a Panel representing his regulatory body, the HCPC, in erasing him from the register.

The central point of the statutory appeal was whether the regulatory body had sufficiently pleaded the allegation of dishonesty that was ultimately found against the Appellant, whether the allegation had been properly put to him during the commuted time that he gave evidence, and whether it was open to the Panel to make the finding against him in circumstances where he became unable to complete his oral evidence or participate fully in his defence of the allegations by reason of his failing health.

The Court (Ouseley J) dismissed the appeal finding that whilst the allegation of dishonesty could and should have been pleaded, and put to the appellant more clearly, standing back and considering the quality of representation that the appellant had before the Panel below, he had sufficient opportunity to understand and respond to the dishonesty allegations that ultimately were found against him and, on balance, there were insufficient grounds for the appeal court to interfere with the Panel's exercise of discretion.

Trainee doctor recovers £644,000 in damages in respect of moderately severe post-traumatic fibromyalgia following a car accident

01/05/2018

Barristers involved: Marcus Grant
His claim was presented on the basis that he had lost the chance of a more lucrative career in medicine as a consequence of the condition, for which the prognosis of significant further recovery was poor.

The Defendant admitted the soft tissue injury but nothing more. She asserted that the widespread pain condition, diagnosed as

fibromyalgia, emerged too long after the car accident to establish a causal nexus and identified an array of alternative stressors in the Claimant's life that were more likely triggers. Furthermore, she contended that his prognosis was more optimistic and questioned the efficacy of his proposed career model.

The case settled through negotiation part way between the Parties' best positions.

Property developer recovers £300,000 in damages following a crush injury to his hand

30/04/2018

Barristers involved: Marcus Grant
The manufacturer had designed the roll bar to be held in place by a lynch pin held in place with an 'R clip'. Over the years these had been lost and were replaced by the hire company with nuts and bolts. The vibration of the use of the excavator had caused the nuts to work their way loose and the bolts to fall out, such that the roll bar was only held in place by gravity, until the Claimant placed his hand on it.

A claim was brought solely in negligence against the hire company. Liability was denied. The damages claim was complicated because it involved a forensic accounting review of the impact of the injury on his ability to optimize the profitability of maintaining his property portfolio.

The case settled through negotiation.

52-year-old pilot recovers £610,000 in damages following a whiplash injury

24/04/2018

Barristers involved: Marcus Grant
He was unable to work for 14 months after the accident and then returned to flying. He continued to fly a full roster for the ensuing c. 4 years complaining of a narrowly defined band of thoracic pain, exacerbated by adopting certain fixed postures, including sitting with his arms in front of him when holding a joystick in a commercial aircraft. Also, he suffered headaches in the acute post-accident period which returned at the 5th anniversary of the accident. His ability to tolerate this pain reduced with the passage of time to the point where he requested part time flying hours, was prescribed pain killing medication and had his licence to fly temporarily suspended by the CAA.

There were multiple issues in the case including the diagnosis and aetiology of his subjective complaints of pain, whether they were objectively sufficiently intrusive to warrant any reduction in his flying hours, whether he had failed to mitigate his loss by seeking part time hours, the prognosis, his likely career path as a pilot and his credibility.

The case settled through negotiation.

Judgment on liability for Claimant Police Officer in a road traffic accident injury claim

06/04/2018

Barristers involved: Marcus Grant
At the time she was attending to a call to search for a missing person and was speaking to some pedestrians standing on a driveway on the opposite side of the road to which she was originally driving. She parked up on the wrong side of the road, switched off the BMW's head and side lights and switched on its white roof 'take down lights'.

The Defendant denied liability, stating that the take down lights were confusing in that they appeared to approaching drivers as though they were head lights of an oncoming vehicle in the far distance. He stated that he only realised very late that they were in fact lights on a stationary vehicle parked on the wrong side of the road. He braked late but could not avoid the collision.

The Master found the Defendant was negligent because he had the stationary BMW's take down lights in his vision for approximately eight seconds before impact and that he was negligent in failing to heed that the lit object ahead was stationary and on his side of the road.

Liability was apportioned 70% : 30% in the Claimant's favour. She was criticised for not making the BMW more visible to approaching motorists, by way of a combination of her head, side or hazard lights.

Mr Justice Martin Spencer approves £1.35m lump sum settlement in a brain injury case – 29.03.18

29/03/2018

Barristers involved: Marcus Grant
Marcus Grant instructed by Amina Ali of Barings Solicitors, represented a 27 year old pedestrian who sustained a severe brain injury in a running down accident when he walked into the path of a car at night whilst intoxicated. It took 5 years to secure a 50:50 liability apportionment whereupon funding was made available to attempt to provide neuro-rehabilitation to treat the symptoms of a significant dysexecutive syndrome. The brain injury left his neuro-psychological executive functioning intact; however, his judgment centre was affected rendering him prone to making impulsive, erratic and often self-destructive decisions. He was of low pre-morbid intelligence with a forensic history which made the assessment of the 'but for' part of his claim difficult. Further he rejected much of the neurorehabilitation and follow-up support given to him and developed an alcohol and illicit drug dependency. An issue in the case was whether he would be overcompensated if he recovered damages for a support structure that he subsequently rejected. A global lump sum settlement was reached at £2.7m, reduced to £1.35m to reflect the liability apportionment.

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90 year old lady recovers £298,000 gross of contributory negligence for a shoulder injury in a running down accident

28/03/2018

Barristers involved: Marcus Grant
The Claimant was an 86-year-old widow living alone when she sustained a comminuted fracture to left proximal humerus that required fixing with a plate. She was left with a substandard shoulder but was fiercely independent and rejected any significant external care package. At the age of 89 the plate snapped and she needed to undergo shoulder replacement surgery which was successful in reducing the pain but left her with an effectively useless non-dominant upper limb and increased the risk of falling. She continued to resist the imposition of an expensive care package but did accept light touch support. The settlement reflected the heightened risk that she would need a significantly enhanced private care regime in the future. A 20% reduction in her damages was agreed to reflect an apportionment of liability between the Parties.

The case was settled through negotiation at a point between the Parties' respective best case scenarios.

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32 year old healthcare manager recovers £950,000 for the consequences of a mild traumatic brain injury following a moped accident

28/02/2018

Barristers involved: Marcus Grant
The Claimant was 27 at the time of the accident. He sustained fractures to his right arm and leg in the accident together with PTSD, depression, vestibular dysfunction and concussion. He made a reasonable recovery from the orthopaedic injuries but was left with a cluster of physical, cognitive, behavioural and psychological symptoms that rendered him unable to hold down sustained employment, despite trying, and unable to hold down a sustainable relationship. He received a lot of support from his family. 4½ years after the accident this cluster of symptoms was attributed to a probable mild diffuse axonal injury, a diagnosis resisted fiercely by the Defendant's experts and some of his own experts, especially in the face of normal neuro imaging. However, the Defendant was not prepared to accuse him of fabricating or consciously exaggerating the symptoms which left the diagnosis/formulation of MTBI with lasting disabling symptoms as the most compelling explanation for his enduring dysfunction.

The case was settled through negotiation following a second JSM at a point between the Parties' respective best case scenarios.

TGC Fraud Update Issue VII – February 2018

21/02/2018
Barristers involved: James Laughland James Henry Marcus Grant Tim Sharpe Ellen Robertson George Davies

Please see link below for Issue VII of the TGC Fraud newsletter.

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

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Teare J finds Mr Gentry guilty of deceit and contempt of Court and sentences him to 9 months' imprisonment, suspended for 2 years

19/01/2018

Barristers involved: Marcus Grant
Mr Gentry claimed that his Range Rover was written off in a road accident with UKI's insured, Mr Miller. UKI admitted liability on Mr Miller's behalf, made an interim payment of £14,000 for the pre-accident value of Mr Gentry's Range Rover. Mr Gentry, represented by Armstrong's Solicitors, issued and served proceedings on Mr Miller for general damages and £56,540 worth of credit hire charges, and secured a default judgment, which he sought to enforce against UKI.

Late in the day, UKI discovered that Mr Gentry and Mr Miller were known to each other, and applied 2 months late to set aside the default judgment. A District Judge allowed the application. Mr Gentry appealed to a Circuit Judge who dismissed his appeal. Mr Gentry appealed again to the Court of Appeal and won [2016] EWCA Civ 141, obtaining an order that UKI be bound by the default judgment and pay the costs of the action. On application by UKI, that Order was stayed pending the outcome of tort of deceit proceedings that were then issued and served.

The deceit action commenced in March 2016, asserting that the alleged accident was staged and the entire claim was predicated on a deceit. Also, UKI alleged contempt of Court against Mr Gentry pursuant to CPR 32.14 and 81.17(1)(a). Mr Gentry admitted the contempt on the limited basis that he lied about not knowing Mr Miller before the accident; however, he contested the deceit claim alleging that there was a genuine accident caused by Mr Miller's negligence. After a two-day trial on the deceit claim, Teare J found that the deceit proved to the requisite standard of proof, and found that the alleged accident was staged, and that Mr Gentry had conspired with two others to deceive UKI.

Teare J set aside all the costs orders in Mr Gentry's favour made by the Court of Appeal, ordering him to repay the sums paid to him by UKI and to pay UKI's costs of the earlier proceedings and of the tort of deceit and committal actions on an indemnity basis. He sentenced Mr Gentry to 9 months' imprisonment, which he suspended for 2 years on condition that he repay £1,250 pm towards the sums owed to UKI. Teare J relied on the early admission of the contempt, and on Mr Gentry's previous good character and the specific hardship that would be experienced by people around him if he were to be imprisoned, in deciding to suspend the sentence on terms.

Follow the link below for a full copy of the judgment on Lawtel.

You can view the publication at http://tgchambers.com/wp-content/uploads/2018/01/Gentry-Judgment.pdf

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Marcus Grant shortlisted as The Legal 500 Personal Injury & Clinical Negligence Junior of the Year 2018

24/11/2017

Barristers involved: Marcus Grant
TGC are delighted to announce that Marcus Grant has been shortlisted as The Legal 500 Personal Injury & Clinical Negligence Junior of the Year 2018. The winners in all categories will be announced next week.

Dispensing Optician recovers £320,000 for a suspected mild Traumatic Brain Injury

03/11/2017

Barristers involved: Marcus Grant
Dispensing Optician recovers £320,000 for a suspected mild Traumatic Brain Injury. Marcus Grant, instructed by Tom Ranson of Ashton's Legal, represented the Claimant.

Following a moderately severe rear-end shunting accident on the M1, this (then) 33-year-old Dispensing Optician sustained a whiplash injury and presented with symptoms of headaches, reduced memory and concentration, heightened mental fatigue, OCD

character traits, reduced tolerance, impaired decision making and symptoms of post traumatic stress disorder.

Clinical assessment by his experts confirmed post traumatic amnesia (PTA) of between 15 and 30 minutes only, a normal GCS, no loss of consciousness, a normal MRI of the brain and no retrograde amnesia. He underwent a course of CBT and his PTSD symptoms remitted to a sub-clinical level. The enduring cluster of cognitive and behavioural symptoms remained. Despite them, he continued working full time as a Dispensing Optician over the 5.5 years between the accident and settlement. On his case, this was only possible because of adjustments made by his employer in the workplace. Neurospychological testing by his expert revealed a subtle pattern of deficits in delayed working memory and processing speed tasks, against a backdrop of a pre-morbid superior intellect, that was consistent with a diagnosis of Diffuse Axonal Injury following on from mild Traumatic Brain Injury (mTBI).

The Defendant's experts accepted that the Claimant was a reliable informant but attributed his subjective cognitive and behavioural symptoms to a combination of pre-existing psychological vulnerability, post-accident anxiety attributable to the sub clinical PTSD and the stress of the litigation; Its experts contended that the residual symptoms that would settle post-litigation with CBT, leaving him at no disadvantage on the labour market. The experts in their reports and joint statements analysed the emerging literature on the incidence of chronic disabling symptoms amongst the enormous cohort of mTBI patients throughout the population, literature dating between 1943 and October 2017.

The case was settled through negotiation at a point between the Parties' respective best case scenarios.

PA and Personal Trainer recovers £1.5 m for severe post traumatic fibromyalgia / somatic symptom disorder

25/10/2017

Barristers involved: Marcus Grant
PA and Personal Trainer recovers £1.5 m for severe post traumatic fibromyalgia / somatic symptom disorder. Marcus Grant, instructed by Alex Cohen of Brian Barr Solicitors, represented the Claimant.

Following a modest rear-end shunting road accident, an otherwise fit and healthy PA and part time fitness trainer sustained a whiplash associated disorder that interfered with her ability to work normally and resulted in her being unable to achieve restorative sleep. Being unable to work effectively caused her anxiety. Over the course of c. 4-6 months after the accident her whiplash symptoms transformed into a more widespread diffuse aching throughout her body coupled with headaches, mental fatigue and impaired cognitive function. Seven months after the accident a rheumatologist diagnosed fibromyalgia although features of her presentation did not fit comfortably within the diagnosis. Over the ensuing five years her health deteriorated, and despite having access to a bespoke residential pain management course, her function declined to the point where she became largely wheelchair dependent and acquired significant care and housing needs.

On her case her presentation was explained by post-traumatic fibromyalgia; the nexus between the trauma and the subsequent fibromyalgia was not simply a temporal one, but one involving a mechanism of trauma-induced non-restorative sleep, specifically an inability to achieved Rapid Eye movement (REM) sleep. On her case, she did not present with any other self standing psychiatric disorder to explain part or all of her symptoms. The prognosis was poor and she would require substantial care and assistance for the rest of her life.

The Defendant's experts considered that her presentation on physical examination of exquisite pain that made it impossible to conduct a structured assessment for fibromyalgia was more suggestive of a psychiatrically-mediated disorder rather than post-traumatic fibromyalgia, and considered that somatic symptom disorder best encapsulated that presentation. They considered that she presented with perfectionist and driven character traits before the accident that rendered her vulnerable to descending into an equivalent psychiatrically-mediated chronic widespread pain state in the absence of trauma, or within a short period of her 38th birthday (her age at the time of the car accident). Furthermore, they contended that because the predominant explanation for her presentation was psychiatrically mediated, rather than organically mediated, the prognosis for substantial, though incomplete recovery was good; the treatment modality of choice was CBT, coupled with a functional restoration programme.

The case settled on day 6 of a trial in the Queen's Bench Division at a point between the Parties' respective best case scenarios.

Barrista Trainer recovers £2.2m for head and spinal injuries

13/10/2017

Barristers involved: Marcus Grant
28 year old Barrista Trainer recovered £2.2m after sustaining a multiple injuries in a car that overturned and struck a tree. Marcus Grant, instructed by Peregrine Redgrave of Stewarts LLP, represented the Claimant.

On her case the Claimant sustained an unstable T12 fracture that had partially united resulting in a kyphosis, a closed head injury causing significantly debilitating diffuse axonal injury at a microscopic level, injury to her vestibular apparatus causing vestibular migraine and significant neuropsychiatric sequelae. These injuries overlay a pre-accident psychological vulnerability and hypothyroidism and obesity. On her case, she wouldn't be able to work again and needed case management and support worker supervision into the long term future.

The Defendant contended that the head injury caused no more than mild traumatic brain injury and that any enduring subjective neurocognitive sequelae were psychologically mediated and capable of further improvement. The spinal fracture was stable and any kyphosis at the fracture site was minimal and unlikely to be a significant source of enduring disability. Any future need for care and support was more likely to be a reflection of significant pre-accident life challenges surrounding her significant psychiatric vulnerability and issues surrounding her hypothyroidism and obesity. In any event, she would not accept the sort of support package recommended by her experts.

The claim settled through negotiation at a point between the Parties' respective best case scenarios.

Police Sergeant recovers £1.65m for a brachial plexus injury

13/10/2017

Barristers involved: Marcus Grant
36 year old Police Sergeant recovered £1.65m after sustaining a brachial plexus injury when her hand became caught in the door handle of a car being driven by a thief who was attempting to evade arrest. Marcus Grant, instructed by Tracey Benson of Slater & Gordon, represented the Claimant.

On her case the Claimant sustained a traction injury to the left brachial plexus and went onto develop a generalised plexopathy. Surgery aggravated her pain and she was left with chronic neuropathic pain in the left upper limb that brought about her medical retirement from the Police and in need of ongoing support. She had been on the Police High Potential Development Scheme and brought a claim for the loss of chance of a career up to the rank Assistant Chief Constable.

The Defendant admitted liability and the fact that she had sustained a brachial plexus injury that brought about an early medical retirement. The Defendant was more upbeat about her future, contending that any residual pain was psychologically mediated and capable of resolution with further psychological treatment after the conclusion of the litigation. The Defendant was more cautious in assessing her promotion prospects.

The claim settled through negotiation at a point between the Parties' respective best case scenarios.

Builder recovers £1.16m for a head injury sustained in a fall

13/10/2017

Barristers involved: Marcus Grant
54 year old builder recovered £1.16m gross of 10% contributory negligence, after sustaining a head injury when he stumbled and fell on a defective brick on a set of steps leading to his rental property. Marcus Grant, instructed by Christopher Dickinson of Dickinson Solicitors represented the Claimant.

On his case he sustained a closed brain injury comprising diffuse axonal injury at a microscopic level and PTSD, as a consequence of which he was unable to run his building business effectively, despite still working at a reduced level through to the date of trial. He presented with a cluster of physical, cognitive, behavioural and psychological symptoms that were consistent with a frontal lobe dysexecutive syndrome. In addition to being unable to work effectively, he separated from his wife, on his case on account of the consequences of his dysexecutive syndrome and needed supervision from a case manager and support worker into the future.

The Defendant viewed the case differently. In the absence of any identifiable damage on CT, no contemporaneous clinical

observations of post traumatic amnesia or reduced Glasgow coma score, the Defendant contended that he probably did not sustain DAI or PTSD and that any perceived change in his character was a consequence of pre-existing personality traits and psychological vulnerability coupled with being advised incorrectly that he had suffered significant traumatic brain injury. The claim settled through negotiation on the eve of trial in the QBD.

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24 year old Factory Worker recovers £600,000 for the consequences of a compression fracture to the T12/L1 vertebrae

13/09/2017

Barristers involved: Marcus Grant
24 year old Factory Worker recovered £600,000 for the consequences of a compression fracture to the T12/L1 vertebrae. Marcus Grant (instructed by Daniel Denton of Slater & Gordon) appeared for the Claimant.

In December 2013 the Claimant, then a 20 year old factory worker, sustained a compression fracture to the T12/L1 vertebrae when a stack of glass toppled over onto him. The fracture united leaving a 19° kyphosis. The normal expectation would be that such a patient would make a good functional recovery from such an injury. The Claimant developed chronic neuropathic and mechanical pain around the injury site that prevented him from coping with moderately physically demanding day to day activities, including manual work. On his case, the prospects for significant further functional recovery were modest. The Defendant's initial response through orthopaedic and psychiatric evidence was to assert that there was no organic or psychologically-mediated explanation for his presentation and that the likely explanation was a degree of conscious elaboration. After pain management experts became involved, more attention was paid to the bio-psychosocial model of chronic pain. The Claimant spent an interim payment on a 3 week domicillary pain management programme that made no material difference to his symptoms. His experts concluded that the residual symptoms were likely to be permanent, and that he needed to fashion a life for himself that could accommodate them. The Defendant's pain expert considered that a 12 month course of CBT post-settlement of litigation would bring about a substantial, though incomplete recovery, sufficient for him to resume independence in his work and home lives, subject to the restriction of having to avoid heavy manual activities.

The settlement, achieved through negotiation, reflected a compromise between the Parties' respective positions.

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38 year old former Police Officer recovered £492,000 for the consequences of an ankle injury and PTSD, sustained in a running down accident

05/09/2017

Barristers involved: Marcus Grant
38 year old former Police Officer recovered £492,000 for the consequences of an ankle injury and PTSD, sustained in a running down accident. Marcus Grant (instructed by Phillip Cohen of Brain Barr Solicitors) appeared for the Claimant.

In March 2014 the Claimant, then a 35 year old Traffic Officer employed by Lancashire Constabulary, sustained a ligament injury to his right ankle and PTSD when forced to jump out of the way when the Defendant failed to stop after the Claimant attempted to waive him down. The ligament injury left him unable to run, despite two surgeries. The PTSD was moderately severe until about the 3rd anniversary of the accident, and required a 9 week in-patient stay before it was treated out to sub-clinical levels. His contract of service was terminated by the Lancashire Constabulary, by reason of the combination of his injuries and their residual symptoms. He made a good recovery from the PTSD, though was liable to relapse and recovered a good level of function in the ankle, though needed to avoid heavy physical activity and prolonged periods of being on his feet. The Defendant adduced medical evidence that suggested the ankle symptoms represented an acceleration of inevitable problems 10-15 years hence, and psychiatric evidence that suggested that any genuine PTSD pathology was probably unrelated to the index incident because of the delay in which those symptoms were reported to his treating doctors.

The settlement, achieved through negotiation, reflected a compromise between the Parties' respective positions.

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46 year old middle manager recovers £579,000 for the consequences of a diffuse axonal

brain injury and vestibular damage sustained in a workplace accident
23/08/2017

Barristers involved: Marcus Grant
46 year old middle manager recovered £579,000 for the consequences of a diffuse axonal brain injury and vestibular damage sustained in a workplace accident. Marcus Grant (instructed by Mark Ellis of CFG Law) appeared for the Claimant.

In December 2012 the Claimant, then a 41 year old middle manager employed by Hewlett Packard, sustained a blow to the back of his head when he slipped on a pool of water in a client's office bathroom, and was rendered unconscious for a few minutes. Thereafter he presented with a cluster of physical, cognitive, behavioural and psychological symptoms, the most debilitating of which were pervasive mental fatigue and impaired balance, that rendered him unfit to return to work. With the passage of time and some treatment, he was able to engage in a limited set of activities that included driving short distances and attending a gym, and to assist once a week in a homeless shelter, but was unable to cope with the demands of his job. His team of experts diagnosed the cluster of enduring symptoms as the consequence of likely diffuse axonal injury to the white matter of his brain, together with a peripheral vestibular lesion interfering with his balance mechanism and secondary impaired mood and heightened anxiety-mediate psychiatric pathology, associated with the likely brain injury and with the enforced lifestyle changes. The Defendant's team of experts rejected any suggestion of white matter damage to his brain, even at a microscopic level in the absence of corroborative radiological imaging, and suggested instead that the residual reported subjective symptoms, to the extent that they were genuine, were the product of a pre-accident psychological vulnerability and a misinformed iatrogenic belief system; further the Defendant asserted that they were capable of being reversed with CBT post settlement. Concerns were raised about the Claimant's credibility because various Facebook posts and photographs appeared to contradict the sedate and sedentary lifestyle he described to the doctors. The Claimant had the benefit a PHI policy that paid out 2/3 of his income.

The settlement, achieved through negotiation, reflected a compromise between the Parties' respective positions.

43-year-old Warehouse Worker recovered £539,000 for post traumatic fibromyalgia following a workplace accident – Marcus Grant represented the Claimant
28/04/2017

Barristers involved: Marcus Grant
A Warehouse Worker for Argos fell backwards landing heavily on her right sacro-iliac joint and right wrist, sustaining soft tissue spinal injuries. Her ability to achieve restroratitive sleep was immediately compromised by pain.

Over the ensuring weeks and months the pain evolved and spread to all four quadrants of the body and was accompanied by pervasive fatigue and cognitive impairment.

She continued to battle on at work for 2½ years after the accident, relying on colleagues to carry her and on powerful neuropathic medication to dull the pain. Over time, she became increasingly depressed about her failing health and then went off work.

She was diagnosed with fibromyalgia that became progressively more disabling. She spent £7,995 on a 3 week residential multi-disciplinary pain management programme that did not break the deadlock of her symptoms. The prognosis was poor.

The Defendant did not accept that her fibromyalgia was post-traumatic; instead it asserted that it reprersented a constitutional vulnerability that would have occurred in any event, either at around the time of the accident or in any event within 6 or 7 years. It asserted that the prognosis for further recover was good.

The case settled through negotiation at a joint settlement meeting.

HHJ Wood QC permits committal proceedings for contempt of Court to proceed against 9 injury claimants
06/04/2017

Barristers involved: Marcus Grant
The Insurance company relied on similar fact evidence to confirm links between the identity of the nominal insureds in whose name

policies of insurance had been taken out; no premiums were paid on the policies, connected bank accounts and email addresses were used to set up the policies and neither the named insureds nor their cars could be traced. The alleged accidents occurred 80 miles away from where they allegedly resided. Links could be made between the occupants in two of the three accidents and a link was established between a claimant in the third alleged accident and the director of an accident management company that was used by all nine claimants.

The claimants in the county court action below discontinued their claims on the first day of a 5 day trial where a single Judge was asked to hear them consecutively. Liverpool Victoria contended that they were contrived collisions fabricated for the purpose of attempting to perpetrate insurance fraud. Had the claims succeeded, the Liverpool Victoria would have been faced with a costs bill of £170,000.

HHJ Wood QC sitting as a Judge of the High Court considered the similar fact evidence satisfied the of strong *prima facie* evidence threshold test, and considered that it was both proportionate and in the public interest that the committal action proceed to a full trial.

Barnes v. Seabrook [2010] EWHC 1849 and *South Wales Fire & Rescue v. Smith* [2011] EWHC 1749 considered.

HHJ Main QC accepted evidence of a scientific link between trauma and fibromyalgia

03/04/2017

Barristers involved: Marcus Grant
She suffered pain and shock following the incident during which she though she would die. Within weeks she developed widespread pain affecting all four quadrants of her body accompanied by headaches and cognitive impairment. Her cluster of symptoms was diagnosed by her treating clinicians as fibromyalgia and PTSD. The Defendant rejected any suggestion that she had suffered more than a short lived soft tissue injury and that her presentation was either pathological or fabricated or both. They advanced a differential explanation of somatic symptom disorder (via its psychiatrist) and pre-existing constitutional fibromyalgia (via its rheumatologist).

Fibromyalgia is a chronic pain condition that affects many members of the population. It is a rheumatological condition that is poorly understood. Many insurers have contended for many years that there is no such thing as ‘post traumatic fibromyalgia’, and that this pain condition merely reflects a constitutional susceptibility in the patient, and that any temporal coincidence with a (compensable) trauma is merely coincidental. The industry has placed great reliance on a 2014 academic paper by Wolfe, Hauser et al ‘Fibromyalgia and physical trauma’ Journal of Rheumatology 12.08.14 to refute the notion of ‘post traumatic fibromyalgia’.

HHJ Main QC set aside the time during this 5 day trial to address the medicine thoroughly, and to test the medical literature underpinning the Claimant’s contention that disturbance of her REM sleep cycle over a prolonged period was the trigger for the fibromyalgia; she attributed the sleep disturbance to the PTSD pathology and soft tissue pain caused by the accident and, consequently, attributable to the accident. The Court accepted that scientific link (see § 79 and 144 i & j of the judgment) and found that the accident was the material trigger of the fibromyalgia. However, due to constitutional vulnerability to developing a similar pain disorder in any event, that included a history of childhood abuse, the Court found that within 6 years of the accident the Claimant probably would have succumbed to a similar set of symptoms. It awarded her £205,811.27 by way of damages inclusive of interest.

The Court rejected a full frontal attack on the Claimant’s credibility by way of surveillance evidence and ancillary allegations of fraud. It reviewed in some detail the rules on pleading fraud relying in particular on the guidance of the House of Lords in Three Rivers v. Bank of England [2003] 2 AC 1@ 291 and found that the pleadings in this case, whilst pleading fraud clearly, were ‘seriously defective’ (§107) because they failed to plead with sufficient specificity the primary facts from which an inference of fraud could be drawn, save with regard to the Claimant’s self report of previous accidents.

A copy of the judgment can be viewed here.

Fraser J approves combined PPO and lump sum settlement following the introduction of the new discount rate in a case involving the MIB.

23/03/2017

Barristers involved: Marcus Grant
The Claimant, who was a Protected Party under the Mental Capacity Act 2005, was aged 27 at the date of settlement. The case was controversial because it was alleged that he had participated in an armed robbery using the stolen motorcycle shortly before the accident. A firearm was found at the accident scene. Notwithstanding an ex turpi causa defence, liability was apportioned 90%:10% in the Claimant's favour. An agreement was reached that provided for a combined lump sum / PPO settlement with the heads of care and case management and deputy costs paid on a periodical payment order basis.

The settlement came for approval two days after the new –0.75% discount rate came into force. The Parties renegotiated the terms of the lump sum settlement following the Lord Chancellor's announcement, but opted to retain the PPO elements of the settlement. Fraser J approved the terms of the settlement, taking into account the interests of both the Claimant and the paying party (the MIB). He was satisfied that notwithstanding the reduction in the discount rate, a PPO for the two heads of claim identified was the appropriate mechanism to properly protect this Claimant's interests over the remaining estimated c. 50 years of his life (the brain injury had reduced his life expectancy) in the face of an uncertain future in the money markets due to the economic and political turmoil across the world.

The total value of the settlement was between £3m and £4m, depending on future RPI and life expectancy. An anonymity order protecting the Claimant's identity was made.

Widow recovers £150,000 from a landowner in respect of the death of her husband killed by a falling branch from one of his trees.

22/03/2017

Barristers involved: Marcus Grant
Liability was disputed. It was accepted that the landowner of mature trees adjoining the highway owed a duty of care to road users to carry out periodic inspections by a LANTRA trained tree inspector. It was accepted that no such inspection was carried out before the accident. However, it was disputed that the accident would have been avoided had such an inspection been carried out. The thoroughness of the inspection was not agreed, as to whether a drive by inspection sufficed, or whether the inspector needed to be on foot. The Claimant contended that failure of the branch that fell was foreseeable to a reasonably competent LANTRA tree inspector either on foot on in a drive by inspection because of the branch's length (13 m), weight, shallow angle (almost horizontal which imposed greater leverage at the junction with the trunk where it subsequently failed) and a large occlusion close to the junction with the trunk (indicative of a likely source of rot beneath). The Parties commissioned expert arboricultural evidence that reached conflicting views. The Claimant was only able to run the case at all because of Google Earth images of the branch in its pre-failure state. The case settled through negotiation shortly before trial.

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44 year old IT Project Manager recovered £700,000 after road accident

18/01/2017

Barristers involved: Marcus Grant
In March 2012 the Claimant sustained a soft tissue 'whiplash' injury to his spine in a rear-end shunting road accident. Two weeks after the accident he developed acute deterioration in his neck pain and attended a Minor Injuries Unit whereupon he was advised that he had suffered a fracture to his neck and his head was immobilised in a hard neck collar and he was not permitted to move for 36 hours; he suffered acute distress before a further x-ray excluded any bony injury. He developed anxiety symptoms in addition to pain and suffered disturbed sleep that caused a progressive decline in his health until, over the course of several months, he developed diffuse widespread body pain that became progressively more disabling to the point of rendering him dependent on a wheel chair for mobilising outside the home. The widespread pain condition was diagnosed as fibromyalgia.

The Defendant commissioned evidence to suggest that the presentation was psychiatrically driven and was mediated by a constitutional vulnerability rather than the consequences of the car accident.

The £700,000 settlement of his claim was the product of a negotiation between the Parties, weighing up the credibility, vulnerability and causation risks on the facts of the case.

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34 year old Police Officer recovered £600,000 net of contributory negligence for the

consequences of a brain injury sustained in a motorcycle accident. Marcus Grant (instructed by Nigel Mills of New Law Solicitors) appeared for the Claimant.

20/12/2016

Barristers involved: Marcus Grant
After the accident the Claimant received first rate rehabilitation through the Rehabilitation Code by reason of the proactive steps taken by the Defendant's Insurer, the Liverpool Victoria. The Claimant returned to modified duties four months post accident and passed his Inspector exams and secured successive postings as an Acting Inspector in non-front line jobs. He struggled and exhibited increasing signs of anxiety and fatigue as he attempted to cope with the cognitive demands of his work. Adjustments were made by his employer that included placing him on an 80% contract and ensuring that he did not work night shifts or on call so that he could regularise his sleep patterns.

At the date of settlement, 4 years post-accident he was still in his adjusted duties role, but it remained uncertain whether he would be able to cope with it into the medium and long term. One of the issues between the Parties was the feasibility of him seeking a less pressurised role as a non-operational Sergeant which he was unwilling to countenance.

Issues of mitigation of loss were raised by the Defendant in addition to challenging the diagnosis and prognosis provided by the Claimant's medico-legal team. The Defendant's battery of neurological experts sought to minimise the organic component of his persisting symptoms and considered that his condition would likely improve with the litigation settled and the current support structure of ongoing treatment with a neuropsychologist, clinical psychologist and neuropsychiatrist
being 'diplomatically withdrawn'. The bulk of the settlement award comprised future loss of earning capacity.

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31 year old Trainee Chef recovered £3,650,000 for the consequences of a spinal injury sustained in a cycling accident.

29/11/2016

Barristers involved: Marcus Grant
Reports were obtained at an early stage to address life expectancy, spinal, housing, care and equipment needs at an early stage. Consideration was given to a PPO but the Parties instead agreed on a lump sum settlement award in the above sum that reflected an allowance for contributory negligence risks raised by the Defendant, but without any expert evidence in response from the Defendant.

Garnham J finds one count of contempt proved and two counts not proved

25/11/2016

Barristers involved: Marcus Grant
Aviva claimed that the named Respondent had lent his identity to front a claim when someone other than him was driving his car at the time of the accident; further that he advanced a claim for £1,026 in respect of 12 physiotherapy sessions he asserted he had received, substantiated by serving a discharge report from the physiotherapist who allegedly had treated him; Aviva asserted that he had not undergone the treatment and that the documents asserting otherwise were false. Finally, Aviva asserted that the Respondent advanced an account of the accident that he knew to be false in order to substantiate an unfounded claim for damages.

The Court found the first and third counts not proved. The Court reject an purported Defence that the Defendant had not read the documents he signed but trusted his solicitors to ensure that they were accurate and true. The Court found that the Defendant had dishonestly signed a statement of truth on a Schedule of Loss claiming damages for physiotherapy charges that he had not incurred and had no intention of incurring. The Defendant was fined £1,000, payable in instalments and there was no order as to costs.

Fraud established and exemplary damages recovered

18/11/2016

Barristers involved: Marcus Grant
The Defendant advanced a positive case of fraud relying on (1) engineering evidence that demonstrated that the Claimants' car

was stationary when it sustained nearside damage which contradicted their alleged account of the mechanism of the accident, (2) numerous discrepancies between the various accounts of the 11 intimated claims and (3) an assertion that a document containing an alleged confession from the at fault driver was forged with the intention of perverting the course of justice. HHJ Boucher sitting in the Central London County Court accepted all three limbs of the Direct Line's case and made the finding of fraud, awarded exemplary damages of £2,000 against each Claimant and costs on the indemnity basis.

TGC continues to be recognized as a leading set by Chambers & Partners 2017

07/11/2016

Barristers involved: Marcus Grant
We are the only chambers ranked for Motor Insurance Fraud and following on from the success at the Chambers UK Bar Awards Marcus Grant is ranked as the only Star Individual junior for Personal Injury.

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24 year old Construction Labourer recovers £300,000 gross

31/10/2016

Barristers involved: Marcus Grant
In August 2012 the Claimant sustained the above injuries, three months after arriving from South Africa to start a career in construction. He aspired to become a Production Manager in the wind turbine sector. The injury to his left foot left him with nuisance level symptoms for most day to day activities but which on his case compromised his endurance by reason of pain and restricted movement for prolonged standing and heavy manual work. Although he had no tertiary level education, he demonstrated by his post-accident mitigation of his loss of earnings that he was management material. He advanced his claim on the basis that the injury resulted in him losing his chance of optimising his earning potential in a managerial role in construction. At the time of settlement, 4 years post-accident, he was working as a manager in the hospitality industry on a significantly lower salary to what he would have hoped and expected to have earned in construction.

The Defendants challenged the loss of chance model of his loss of earnings claim and contended that instead, the facts of the case were better suited to compensation by way of a modest lump sum 'Blamire' approach. The Parties met and the settlement was the product of a mutual compromise at a point in the case before the Defendants had commissioned expert evidence.

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32 year old Solicitor recovered £527,000 gross for the consequences of chronic pain disorder that developed after a road accident

07/10/2016

Barristers involved: Marcus Grant
She was unfit for work at the time of the accident, having taken c. 6 months off to cope with migraine headaches. There were a number of psycho-social stressors from her childhood and within her marriage at the time of the accident. After the accident her health declined rapidly as she became locked in a central sensitising pain disorder that was largely psychologically mediated. She was forced to abandon her career in the law and was only able to cope with part time tutoring at the time of settlement 5.5 years later. Her case was advanced on the basis that there was a 25% life time chance that she would have descended into an equivalent psychologically-mediated chronic pain disorder. The Defendant did not accept that case and asserted that the soft tissue injuries from the car accident were self limiting and incidental to the decline in her health that would have happened irrespective of any traumatic event. ore limited form of lupus and the onset of fibromyalgia pains.

The £527,000 recovered by way of damages was the product of a mediation between the Parties, weighing up the credibility, vulnerability and causation risks on the facts of the case, 6 weeks before trial.

The 2016 Chambers UK Bar Awards

19/09/2016

Barristers involved: Marcus Grant
TGC are delighted to announce that Marcus Grant has been shortlisted for the Junior of the Year award for Personal Injury/Clinical

Negligence at the forthcoming 2016 Chambers UK Bar Awards to be held at at The London Hilton on Park Lane on Thursday, 27th October 2016.

30 year old Teacher with lupus recovered £200,000 for the consequences of fibromyalgia that developed after a road accident

13/09/2016

Barristers involved: Marcus Grant
In October 2011 the Claimant sustained a soft tissue 'whiplash' injury to her cervical and lumbar spine in a high energy road accident. She needed to be cut from her car by the emergency services. Before the accident, on her case, she suffered from limited cutaneous lupus which was not diagnosed until 10 months after the accident. She continued to work full time as a teacher and suffered pain-induced sleep disturbance. Over the course of c. 6 months after the accident her pain became more diffuse and widespread and was accompanied by profound fatigue and cognitive impairment and headaches. Fibromyalgia was diagnosed at about the same time as the subcutaneous lupus. She was treated with medication for systemic lupus and the diagnosis 'SLE" appeared throughout her medical records even though her biomarkers for the condition were never confirmed.

Her fibromyalgia progressed and became moderately disabling forcing her to seek a non-teaching role that placed less strain on her limited stamina and pain tolerance reserves. She suffered no loss of earnings in the 4.75 years between the accident and settlement. On her case, her fibromyalgia was triggered by pain and anxiety-induced sleep disturbance from the accident. On the Defendant's case the fibromyalgia symptoms were probably part of an undifferentiated connective disease connected to the SLE diagnosis. The Defendant did not accept the more limited diagnosis of subcutaneous lupus was correct and did not accept that there was no causal nexus between that more limited form of lupus and the onset of fibromyalgia pains.

The £200,000 recovered by way of damages was the product of a negotiation between the Parties, weighing up the credibility, vulnerability and causation risks on the facts of the case, 3.5 weeks before trial.

Appeal based on perversity and insufficient reasons succeeds in slam on fraud case

02/09/2016

Barristers involved: Marcus Grant
The Defendant appealed a decision of DJ White in an alleged slam on case. The Defendant pleaded a detailed fraud Defence in a suspected slam-on case that included allegations of bogus passenger claims, a suspicious claims history and inconsistencies between the pleaded case and that intimated in the Claim Notification Forms from the three alleged occupants in the Claimant's car. The Claimant turned up at trial with an interpreter, having given no prior indication that he had not read or understood the seven documents appended with his statement of truth. The Court permitted him time to have each document translated to him by the interpreter before the trial commenced. In a short ex tempore judgment the Judge indicated that he was not satisfied that the collision was a staged accident because there was insufficient evidence of any conspiracy between the Claimant and the alleged decoy car driver. In summary the Judge stated that he preferred the Claimant's evidence to that of the Defendant whom he found gave his evidence in a didactic way.

HHJ Clark, sitting in Luton, allowed the appeal finding that it was unclear to her from the reasoning of the judgment why the Defendant had lost. The DJ failed to address the critical evidential issues in the Defendant's case and make findings on them, before concluding that he preferred the Claimant's evidence to the Defendant's evidence. In the context of a clear pleading of fraud, properly put to the Claimant in cross-examination, the Court could not duck making findings on the critical issues, and could not make findings on burdens of proof until sufficient findings on those issues had been made.

Appeal allowed. Matter to be reheard by a different Judge.

51 year old Mining Engineer recovered £200,000 (gross of contributory negligence) for the consequences of fibromyalgia that developed two years after a workplace accident

26/08/2016
Barristers involved: Marcus Grant

In November 2011 the Claimant fell and sustained a soft tissue 'whiplash' injury to his cervical spine when he stepped onto a moving belt and lost his balance. Liability was compromised 85% in his favour. On his case he continued to experience neck pain that became more intrusive 9 weeks after the accident after playing some cricket. He continued working in heavy manual work in a hot work environment, suppressing the pain with painkillers. 11 months post accident the neck pain provoked referred symptoms down his left arm. MRI scans revealed some age related degenerative changes and two bulging cervical discs, neither sufficient to warrant neurosurgery. He continued to work through the pain, spending a lot on chiropractic treatment and some pain relieving injections. The pain disturbed his deep REM sleep patterns. At about the second anniversary of the accident he developed more widespread pain with associated fatigue, headaches and cognitive impairment, diagnosed by his treating and medico-legal rheumatologists as Fibromyalgia. He struggled on at work until the third anniversary of the accident and then was physically unable to continue working. He was made redundant at the age of 50 when the coal mine in which he worked (the last operating coal mine in Yorkshire) was closed down. He struggled to find sustainable employment thereafter.

The Defendant challenged the Claimant's assertion that there was a continuum of pain after the accident. It noted the absence of documented neck pain before he played cricket 9 weeks post-accident. It contended that the neck pain was probably constitutional in origin attributable to age related degenerative changes and the postural and physical demands of his manual career. Further it contended that the alleged nexus between the neck pain-induced sleep disturbance and the emergence of the widespread pain symptoms was speculative and unsupported by medical literature. The diagnosis of Fibromyalgia was rejected by the Defendant who considered the cluster of subjective symptoms, if genuine, was probably psychologically mediated, preferring a diagnosis of Somatic Symptom Disorder for which the prognosis with appropriate CBT would be optimistic.

The £200,000 gross of 15% contributory negligence recovered by way of damages was the product of a negotiation between the Parties, weighing up the credibility, vulnerability and causation risks on the facts of the case.

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82 year old retired Ghurka recovered £305,000 for the consequences of developing dementia following a running down accident

24/08/2016

Barristers involved: Marcus Grant
An 82 year old retired Ghurka recovered £305,000 for the consequences of developing dementia following a running down accident. The Claimant sustained a 'left periorbital haematoma' and a technically 'mild' brain injury, sufficient to damage the veins across the surface of the brain, when struck by a motorcycle at the age of 79 in 2013. By reason of his age and limited brain reserve he suffered a poor outcome from the head injury and began to dement to the extent that by the 3rd anniversary of the accident he needed a 24 hour presence in the home of a family member to monitor him. The bulk of this monitoring pre-settlement was provided by his wife.

The issues in the case were whether or not the dementia was attributable to the accident or was attributable to constitutional vulnerability or a combination of the two, life expectancy and the extent to which his need to be supervised and/or cared for should properly be met by an external professional case management/support worker team, and what extent it should be provided for gratuitously.

The case was compromised through negotiation and the compromise approved by Master Eastman, it being accepted between the Parties that the Claimant was a Protected Party and a Protected Beneficiary within the meaning of the Mental Capacity Act 2005.

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48 year old part time Care Worker and Masters Student recovered £145,000 following road accident

08/08/2016

Barristers involved: Marcus Grant
A 48 year old part time Care Worker and Masters Student recovered £145,000 for the consequences of fibromyalgia that developed following a road accident. Following a front end collision at c. 25 mph the Claimant developed soft tissue injuries to her neck and shoulders. Before the accident she was a chronic low back pain sufferer and vulnerable to episodic depression; she was taking anti-depressants at the time of the accident. Within 3 months off the accident her neck and shoulder pain became more widespread and diffuse and was accompanied by fatigue, cognitive slowing, headaches and a feeling of being run down. Her mood levels dropped

and her anxiety levels increased. She pulled out of her Masters course and continued to struggle with her part time care work.

A treating rheumatologist belatedly diagnosed 'fibromyalgia'. It was her case that the systemic fibromyalgia cluster of symptoms was triggered by the prolonged sleep disturbance brought about by the soft tissue injuries and the heightened anxiety triggered by the road accident.

The Defendant's experts considered that her symptoms were psychosomatic and merely part of a pre-existing somatic symptom disorder, and that the road accident had no causal potency to the continuation or subjective exacerbation of those symptoms.

The Claimant's fibromyalgia was 'mild to moderate' in that she was able to continue her care work for several years after the accident and to return to her Masters course a year later. However, she continued to be incapacitated by the condition on her bad days. The £145,000 recovered by way of damages was the product of a negotiation between the Parties, weighing up the credibility, vulnerability and causation risks on the facts of the case.

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55 year old unemployed lady recovers £385,500 for a Mixed Dissociative Conversion Disorder [ICD 10 – F44.7] and vestibular damage suffered in a lift accident

02/08/2016

Barristers involved: Marcus Grant
On her case her symptoms were sufficiently severe to require care and case management. The Defendant accepted the headline diagnosis, but only on the proviso that she satisfied the Court that she was credible, which was not admitted. The Defendant rejected the need for any significant care, stating that it would merely reinforce her subjective sense of disability. The Claimant contended that the prognosis for further recovery following the 5th anniversary of the accident was poor. The Defendant was more optimistic. The case settled through negotiation five weeks before trial.

Mr Gentry admits dishonesty in Committal proceedings following Court of Appeal judgment

15/07/2016

Barristers involved: Marcus Grant
The Court of Appeal, however, acceded to an application by UK Insurance to stay execution on the default judgment and all of the costs of and occasioned by the appeals pending the outcome of any tort of deceit action seeking recovery for the consequences of Mr Gentry's alleged deceit. The action arose out of an alleged road accident in March 2012 that gave rise to a default judgment for £75,089 and a judgment on costs of £12,975. UK Insurance discovered cogent evidence linking Mr Gentry to its insured, Mr Miller before the alleged accident. Mr Gentry filed a statement verified with a statement truth saying that they only became friends after the alleged accident. UK Insurance obtained compelling evidence to demonstrate that statement was untrue.

Following the Court of Appeal judgment on 9th March 2016, UK Insurance commenced tort of deceit proceedings in the High Court and, within those proceedings, sought permission to commence committal proceedings against Mr Gentry for his contempt of Court in signing a statement of truth to a witness statement containing material statements of fact he knew to be untrue.
At the permission hearing before HHJ Simpkiss, sitting as a Judge of the High Court, Mr Gentry admitted the contempt. Sentencing will take place later this year. The tort of deceit action remains contested.

Unemployed man settles his crush injury for £539,000

14/07/2016

Barristers involved: Marcus Grant
The Claimant was unemployed before the accident and claiming disability benefits on the basis of a self report of chronic pain against the backdrop of a psychologically troubled past that included being in prison. On his case, he sustained a crush injury to his sacrum, intrusive chronic pain, PTSD and impaired mood pathology, erectile dysfunction and neurogenic bowel dysfunction. The latter was not reported until after the 3rd anniversary of the accident.

The Defendant defended the case on the basis that the Claimant was wholly unreliable and that he was guilty of overstating his difficulties and that it was difficult to discern whether, and if so, to what extent his true residual symptoms were markedly different

to the pre-accident trajectory of his health. The Defendant served medical evidence from experts accusing the Claimant of being dishonest and also served surveillance evidence suggesting that the self report was unreliable.

At the point of the case where the Parties' medico-legal evidence was about to be tested in the joint statement process, the case settled for £539,000 plus costs.

Marcus Grant speaks at the Fieldfisher Brain Injury Conference at City Hall

07/07/2016

Barristers involved: Marcus Grant
The focus of this conference was on patients and clients who have suffered a head injury that cannot be independently verified on scanning and considered the latest learning in the science and within the medico-legal community on how to present these claims. There were talks given by a neurologist, neuropsychologist, audio vestibular surgeon, neuro-opthalmic surgeon, neuro-radiologist as well as Jill Greenfield and Marcus representing the perspective of the legal community. The title of Marcus' presentation was "Are we missing subtle brain injuries? How rigorous clinical methodology from the lawyers and medical experts always prevails at trial" and is is available on request.

TGC Fraud Update v3 – June 2016

22/06/2016

Barristers involved: Marcus Grant George Davies Tim Sharpe Anthony Johnson David R. White James Henry Anthony Lenanton Piers Taylor Matthew Waszak
Stemming the tide of the fraud.

Please see link below for the third edition 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

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Dingemans J approves a PPO in a brain injury case with a 'stop-start' provision for Court of Protection costs

21/06/2016

Barristers involved: Marcus Grant Alex Glassbrook
The Claimant had been found to lack capacity to litigate or manage his own affairs and a Deputy had been appointed by the Court of Protection. However, it was agreed between the parties that the Claimant's capacity to manage his affairs might fluctuate during his lifetime, so leading to the possible cessation of Court of Protection costs and even their subsequent resumption at as yet unknown times.

The Parties applied the judgment of Mrs Justice Swift in AA -v- CC and the MIB [2013] EWHC 3679 to provide for future medical examinations going to capacity and thereby a "stop-start" device for the Court of Protection charges. Those featured in the Schedule to the Tomlin Order. The Court in AA had ruled that such a device could not have been ordered by the court against the opposition of one or both parties, but could be approved if agreed between the parties.

The Court approved the Tomlin Order. The Court also acceded to an application by the Claimant to make an anonymity Order in respect of his identity pursuant to the guidance in JXMX v. Dartford and Gravesham NHS Trust [2015] EWCA Civ 96.

Flaux J awards £75,000 by way of exemplary damages to Direct Line Insurance

15/06/2016

Barristers involved: Marcus Grant
Each Defendant used one of the accident management companies linked to one or more of the addresses: 44-46 Victoria Road, EN4 9PF, 162B Ballards Lane, N2 8EN and 41 Leicester Road, EN5 5EW namely: (Accident Claims Experts, B&T Recovery Limited, Celebrity Car Hire, UK Crystal Car Hire). The 29th Defendant was a Director of Accident Claims Experts.

Direct Line paid out some damages to three of the Defendants which it reclaimed, it expended money investigating the claims and sought recovery by way of damages for its in-house overhead costs in doing so. It also claimed an award of exemplary damages to punish the Defendants and to act as a deterrent to other prospective fraudsters considering involving themselves in a crash for cash scam. The Court acceded to all three heads of claim.

The claim for exemplary damages was unusual because it is an exceptional order that is out of the norm in tort claims. The Court was satisfied that the tort of deceit was proven in each of the cases, that the facts satisfied the second limb of Lord Devlin's threshold test for recovery of exemplary damages in Rookes v. Barnard [1964] AC 1129 (namely: 'where the defendant's conduct has been calculated to make a profit for himself') and Lord Nicholl's test in Kuddus v. Chief Constable of Leicestershire [2002] 2 AC 122 (namely: 'conduct which was an outrageous disregard to the Claimant's rights'). The Court considered that an award of exemplary damages of £2,500 per Defendant (one Defendant participated in two of the fictitious accidents), equivalent to the sum that each might spend on a second hand car, was an appropriate level to create a deterrent. In addition to awarding the other heads of damages claimed, the Court also awarded the Claimant c. £82,000 of costs on an indemnity basis.

Direct Line v. Akramzadeh & 29 Others. A copy of the Judgment will soon become available on Lawtel.

Finding of fraud made in respect of a 'slam on' claim

01/06/2016

Barristers involved: Marcus Grant
Marcus Grant (instructed by Gary Orritt of DAC Beachcroft) appeared for Amlin Insurance to defend two claims brought by a husband and wife from an alleged car accident involving an accident management company (Obssass Hire & Storage) based in Brentford, West London, represented by Asons Solicitors in Bolton. They claimed £176,000 in damages, £161,000 of it in relation to credit hire and storage charges.

The claim was defended on the basis that the collision was deliberately induced, that the contact between the vehicles was minimal and insufficient to cause any injury, that the Claimant's car had pre-existing damage which the Claimants dishonestly attributed to the collision, their self report of injuries was fabricated, that their attempt to claim £1,026 on physiotherapy charges for treatment that was never undergone was fraudulent and that the resulting hire of a prestige car for more than 500 days at a daily rate of £270 was obscene.

The trial was heard over two days before Mr Recorder Bellamy at the Mayors and City of London Court. The Court found for the Defendant on all issues. A finding was made that the claim was 'fundamentally dishonest' in accordance with CPR 44.16(2) and the QOCS regime was disapplied. The Claimants were ordered to pay the Defendant's costs of the action on the indemnity bases and an Order was made permitting the Defendant to apply for an Order that Obssass Hire & Storage should pay all or part of its costs pursuant to Section 51 of the Supreme Court Act; Farrell v. Direct Accident Management Services [2009] EWCA Civ 769 was applied.

High Court grants permission to commence committal proceedings

18/05/2016

Barristers involved: Marcus Grant
Marcus Grant (instructed by Laura Hardiman of Keoghs LLP) appeared for Aviva Insurance in committal proceedings in the Queen's Bench Division for contempt of court in respect of signing a statement of truth on one or more documents in County Court proceedings that Aviva asserted the Respondent knew to be untrue. Aviva claimed that the named Respondent had lent his identity to front a claim when someone other than him was driving his car at the time of the accident; further that he advanced a claim for £1,026 in respect of 12 physiotherapy sessions he asserted he had received, substantiated by serving a discharge report from the physiotherapist who allegedly had treated him; Aviva asserted that he had not undergone the treatment and that the documents asserting otherwise were false. Finally, Aviva asserted that the Respondent advanced an account of the accident that he knew to be false in order to substantiate an unfounded claim for damages.

The Respondent appeared in person and denied all of the allegations. Without making any factual findings on the principal issues, Mr Justice Garnham found that Aviva had a strong prima facie case to establish the alleged contempt to the criminal standard of proof, that it was in the public interests that committal proceedings should proceed and that, notwithstanding that this was a low value fast track injury claim in the Doncaster County Court before the respondent discontinued his proceedings, it was proportionate that the claim be permitted to proceed. In making these findings the Judge applied the guidance in Barnes v. Seabrook, South Wales Fire & Rescue and Quinn Insurance v. Altintas.

Central London Judge refers Claimants to the Director of Public Prosecution

20/04/2016

Barristers involved: Marcus Grant
Marcus Grant (instructed by Hannah Lowe of Keoghs LLP) appeared for Tesco Insurance to defend two claims brought by a husband and wife from an alleged accident involving an accident management company (Accident Claims Expert "ACE") based in Barnet, North London.

Tesco was unable to trace its insured to the address provided when setting up the policy. Database searches revealed that the same address was used to set up a policy with Aviva Insurance that resulted in a second accident claim. Aviva was unable to trace its insured to the same address. Its insured provided Aviva with a mobile telephone number that arose in a third accident claim also made against it. All three accidents involved the same accident management company, ACE.

Tesco Insurance and Aviva Insurance pleaded defences alleging fraud against the claimants in the three accidents. The Aviva Insurance claims were subsequently struck out and discontinued respectively and the Tesco Insurance claim continued to trial before Her Honour Judge Boucher in Central London. The Claimants were cross examined and found to be unreliable and to have lied about the happening of the accident, and about their subsequent alleged injuries and consequential losses The First Claimant alleged that he had been involved in four separate accident claims in the first four years of living in the UK, having moved here from Iran. Neither Claimant was able to adduce any independent evidence that the accident occurred as they claimed. The First Claimant failed to disclose that he had his car repaired, and that he had sold it some 7 weeks before he relinquished a credit hire car costing c. £95 pd that he was maintaining a claim for.

HHJ Boucher dismissed the claims on the basis they were fraudulent. She found that the Claimants were 'fundamentally dishonest' within the meaning of CPR 44.16(2) and ordered them to pay Tesco Insurance's costs of the action on an indemnity basis. Further, she ordered that the file and her judgment be passed to the DPP with a view to criminal prosecution of the Claimants, observing that too much valuable Court time in Central London was being consumed by fraudulent insurance claims, delaying access to justice to genuine and needy litigants, such as homeless litigants wishing to challenge repossession orders.

36-year-old Polish Warehouse worker settles his head injury claim for £400,000

24/03/2016

Barristers involved: Marcus Grant
The Claimant, then a 32-year-old Warehouse operative sustained a severe brain injury, diplopia, a stutter, a wrist fracture, erectile dysfunction and a major depressive disorder. Despite the severity of his injuries, and demonstrating commendable grit and determination he returned to work within 4 months of the accident to a blue chip employer who made significant adjustments to accommodate him. He sustained a personality change as a result of the head injury that made him stubborn and insubordinate at work. 42 months after the accident he was disciplined at work and demoted from operating machinery to working on a production line with a resulting reduction in his earning capacity. The lion's share of the settlement sum reflected his reduced prospects in the labour market and his general damages award. The case settled through negotiation.

31-year-old student settles chronic pain case for £260,000

14/03/2016

Barristers involved: Marcus Grant
Marcus Grant (instructed by Colin Cook of Hatch Brenner) appeared for the Claimant in an action arising out of a car accident. The Claimant, then a 26-year-old Open University Student was in a car struck from behind. She sustained a Whiplash Associated Disorder that progressed into a chronic pain condition comprising localised intrusive neck and low back pain together with a cluster

of cognitive symptoms, fatigue and reactive depressive symptoms. 2 years after the accident she was forced to give up her studies and, after the 3rd anniversary of the accident her fatigue became more profound. It was diagnosed mistakenly as CFS/ME/Fibromyalgia. On her case the steady decline in her heart was attributable to the direct and indirect consequences of the accident. The Defendant's experts contended that whilst the chronic pain symptoms were probably attributable to the accident, the prominent fatigue was not and was attributable to a pre-accident tendency to chronic fatigue that coincidentally presented itself three years after the accident for reasons unrelated to it. He contended that the fatigue was the mediating source of her disability, not the pain and that its became intrusive too long after the accident to be attributed to it; furthermore, the Defendant contended that the physical injuries would respond well to further treatment thereby terminating any ongoing loss of earning capacity that the Claimant might be able to establish. The case settled through negotiation.

36-year-old Warehouse Picker settles her CRPS claim for £450,000

11/03/2016

Barristers involved: Marcus Grant

Marcus Grant (instructed by Sofie Toft of Irwin Mitchell Solicitors) appeared for the Claimant in an action arising out of a workplace accident. The Claimant, then a 31-year-old Warehouse Picker, sustained a crush injury to her non dominant hand when some heavy boxes fell on it at work. She sustained soft tissue injury which caused her pain that subsequently progressed into a Chronic Regional Pain Syndrome ["CRPS"]. She was unable to work and became depressed and anxious. three years after the accident she developed a swan necking contracture in three fingers of the hand caused by the spasm making the muscles fibrotic. The Defendant served 19 days of covert surveillance and contended that it demonstrated that the contractors were voluntary and that her presentation to the medical experts was coloured by conscious exaggeration. On the Claimant's case, her presentation was explicable by her profound psychiatric response to the enforced lifestyle changes, the pain and the appearance of her hand, which disgusted her; her psychiatric presentation rendered her unsuited for surgical release of the contractors which would likely cause an acute flare up of her CRPS. On the Defendant's primary case her presentation was mediated by volitional factors that would resolve without the need for surgery. Its alternative case is that the contractors, if fixed, would be amenable to surgery and that the future would be optimistic. The case settled through negotiation.

A 42-year-old Account Manager settles his fibromyalgia claim for £494,000.

03/03/2016

Barristers involved: Marcus Grant

The Claimant, then a 39-year-old Account Manager, sustained soft tissue 'whiplash' type injuries in a head-on car crash. The pain from his soft tissue injuries disturbed his sleep which in turn resulted in the nature of his pain progressing into a more diffuse aching to the muscles in the four quadrants of his body coupled with profound fatigue and cognitive impairment. The cluster of symptoms was described by the diagnostic label of fibromyalgia. He was unable to remain in his role as an Account Manager and opted for less intensive work as a part time Mindfulness Counsellor. The Defendant contested causation contending that by reason of prior vulnerability to anxiety, pre-existing ankylosing spondylitis and ulcerative colitis that either he already had fibromyalgia before the accident, or alternatively he would have developed an equivalent chronic pain condition irrespective of any intervening traumatic event. The Defendant contended for a more optimistic prognosis for recovery than the Claimant. The case settled through negotiation.

18-year-old Model settles her subtle head injury claim for £348,000, less 25% contributory negligence.

25/02/2016

Barristers involved: Marcus Grant

The Claimant, then a 12-year-old pedestrian was struck by a car at low speed on a pelican crossing when the pedestrian light was on red. Her head hit the windscreen and she was thrown into the road. She sustained negligible physical injuries but was subsequently diagnosed with PTSD and depression. These symptoms overlay a pre-existing tendency to anxiety and somatic behaviours. Her schooling was severely disrupted by her injuries which included profound fatigue, diagnosed 3 years post-accident as CFS. 4 years post accident she was diagnosed through the litigation as probably having suffered a subtle diffuse axonal injury ["DAI"] which was mediating in part the enduring cluster of subjective physical, cognitive, behavioural and psychological symptoms. Instead of following a pathway into tertiary education like her brother, she dropped out of school and went into modelling on a part time basis. Her future, like her prognosis was uncertain. The Defendant contended that she sustained no more than minor soft tissue injuries in the accident and that her progression since the accident was merely a continuation of pre-existing

vulnerabilities. The suggestion that she sustained any DAI was denied. The case settled through negotiation.

Court of Appeal upholds finding of fraud

15/02/2016

Barristers involved: Marcus Grant
Marcus Grant (instructed By Ruth Needham of Keoghs LLP) appeared for Aviva Insurance in a series of conjoined cases arising out of alleged 'slam-on' collisions involving drivers using the same group of accident management companies. Similar Fact Evidence was relied upon to establish amodus operandi that involved irrational braking to a halt of vehicles on one of the North London arterial roads following purported emergencies created by alleged decoy vehicles. Eight conjoined cases were heard back to back by HHJ Mitchell in Central London in June 2013 and findings of fraud were found in all eight. However, on the eighth case, the Judge found that there was no link between the Claimant and the alleged decoy vehicle; instead the Claimant had opportunistically and dishonestly decided to execute emergency braking with the intention of inducing a collision when presented with inconsiderate driving by a stranger who cut him up. The Claimant and his wife appealed the finding submitting that it was perverse in that it was not open on the evidence for the Judge to reach that conclusion.

The Court of Appeal disagreed. The Defendant's case of dishonesty had been properly pleaded and sufficiently addressed in cross-examination for the Judge to make the findings he did. The appeal was dismissed

The case is reported on Lawtel:- Fertek & Peker v. Aviva Insurance [2016] EWCA Civ

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TGC Fraud Update

03/02/2016

Barristers involved: Charles Curtis Marcus Grant Edward Hutchin George Davies Tim Sharpe Anthony Johnson James Henry Richard Boyle Matthew Waszak
Thank you for reading this second edition of TGC Fraud Update, a publication which was set up with the stated aim of facilitating the sharing of information about decided claims involving issues of road traffic fraud and related matters. Thank you also for all of the kind words and helpful feedback received about the inaugural edition.

Some of the trickiest types of fraud cases to defend at trial are those involving fraud rings- linked cases involving several separate purported road traffic accidents featuring the same or overlapping personnel (sometimes organised criminals, albeit frequently caught out by their disorganisation!) and usually deliberately staged, contrived or induced accidents. Often there is an overall 'guiding mind' linking seemingly unrelated incidents, be it an individual, an accident management or hire company or even a firm of solicitors.

However, one of the challenges that arises is that intelligence can never be perfect and often the identities of some of thedramatis personaewill never be known (this may well often be because they do not exist). Often the fraud ring cases that do reach trial are those where the links between the claims and the claimants are at their most oblique- direct evidence of communication and co-operation between individuals who claim not to know each other is usually enough to scare off even the most stubborn claimant solicitors!

As with most rapidly developing areas of law, information about the outcome of decided claims, and more importantly the reasons behind them, is a great way equipping oneself to best tackle future claims where the same or similar issues are raised. Fortunately, TGC has had a glut of fraud rings successfully defended to trial in the last couple of months- the lead article focusses on the particular challenges posed (and duly overcome) in some of these cases. It can be seen that thorough preparation is critical, as these types of cases are invariably 'document heavy', but also that there is no substitute for demolishing the credibility of a suspect individual through robust cross-examination.

The TGC fraud team are more than happy for you to contact them if you have any queries about any of the contents of this issue, or indeed about any other issues relating to insurance fraud and related matters.

TGC Fraud Update February 2016

Dishonest litigant and witnesses receive prison sentences

04/01/2016

Barristers involved: Marcus Grant
An injury Claimant and her witnesses found guilty of contempt of Court (see Chambers News 10 December 2015) were sentenced on 22 December 2015 by HHJ Wood QC (sitting as a High Court Judge). The Defendants each gave pleas of mitigation. The Defendants relied on matters such as the impact that any prison sentence would have on childcare. However, despite the mitigating circumstances the Judge determined that immediate prison sentences had to be imposed against each Defendant. The Defendants were sentenced to between 4 and 8 months in prison.

Marcus Grant (instructed by Hamida Khatun of Keoghs LLP) appeared for Churchill Insurance at trial and judgment, Paul McGrath appeared at the sentencing hearing (in Marcus Grant's absence overseas).

Churchill Insurance Company v Dunn, Reading, Stanley and Reil

Dishonest injury litigant and her witnesses found guilty of contempt of Court

10/12/2015

Barristers involved: Marcus Grant
Marcus Grant (instructed By Hamida Khatun of Keoghs LLP) appeared for Churchill Insurance in a committal action in the Queen's Bench Division for contempt of court in respect of signing a statement of truth on one or more documents in County Court proceedings that he knew to be untrue in a way likely to interfere with the course of justice. Ms. Dunn and her two passengers each claimed that they sustained injuries in a road accident on the Wirral in April 2011. Churchill Insurance received a tip off that the alleged accident was a staged 'crash for cash scam' and that its insured, Mr Reilly knew the occupants in the other vehicle. Churchill Insurance's case depended on the evidence of Mr Reilly's ex-wife who provided evidence of links between the passengers and of the conspiracy to stage the crash. Her evidence was challenged as the fabrication of a scorned woman. A 5 day trial took place before His Honour Judge Wood QC sitting as a Judge of the Liverpool District Registry of the High Court. On 10 December 2015 he delivered a judgment that was excoriating in its criticism of the system of referral agents in the whiplash compensation industry and which found that Mrs Reilly's evidence against the Defendants was honest and reliable evidence and that the alleged accident was a staged crash. Accordingly the contempt against the Defendants was proved to the criminal standard. Sentencing will take place at the Liverpool Crown Court on 22 December 2015.

The Judgment will shortly be reported on Lawtel:- Churchill Insurance Company v. Dunn, Reading, Stanley & Reilly