



## Anthony Johnson

Year of Call: 2006

### Practice Areas

- Civil Fraud
- Clinical Negligence
- Costs
- Credit Hire
- Insurance
- Personal Injury
- Product Liability

### Email:

[aj@tgchambers.com](mailto:aj@tgchambers.com)

### Awards



### Experience

Anthony specialises in Multi-Track matters involving a personal injury or fatal accident element. He has extensive experience of higher value litigation, having brokered favourable settlements in six and seven-figure claims on several occasions for both Claimants and Defendants. He regularly acts in cases involving complex medical evidence, including chronic pain, brain injury and mesothelioma claims. He is particularly well known for his expertise in insurance fraud litigation.

He is often sought out for his particular expertise in Fatal Accidents Act claims (on both sides). He has recent experience of cases involving, inter alia, issues of employers' liability, occupier's liability, Highways Act, asbestos exposure and sports law. He is prepared to act for Claimants under a Conditional Fee Arrangement in appropriate cases.

He has been at the forefront of the rapidly developing field of insurance fraud, having been involved in several cases where Defendants have sought to push the boundaries of the existing law in the area. He has provided guidance at an industry wide level and spoken at various events on fraud and related issues; he founded and was first editor of the TGC Fraud Update.

### Directories

Recommended as a Leading Junior (Tier 1) in Personal Injury (Insurance Fraud) in the Legal 500 2017, "A strong junior with

*an analytical approach”.*

### **Education**

MA Jurisprudence- Trinity College, University of Oxford

### **Memberships**

Personal Injury Bar Association

London Common Law and Commercial Bar Association

South Eastern Circuit

Middle Temple

### **Languages**

Spanish (Intermediate); French (Basic); Italian (Basic)

## **Cases**

### **Jones v. TUI (Portsmouth CC)**

17.01.2020

Barristers involved: Anthony Johnson

Although the case started life towards the bottom end of the Fast-Track, it was treated by both sides as a ‘test case’ on the admissibility of expert evidence in personal injury litigation. The Judge (DJ Ball) had the benefit of very detailed Skeleton Arguments from both sides and heard a full day of submissions, eventually handing down a reserved judgment at a subsequent hearing.

Although the case started life towards the bottom end of the Fast-Track, it was treated by both sides as a ‘test case’ on the admissibility of expert evidence in personal injury litigation. The Judge (DJ Ball) had the benefit of very detailed Skeleton Arguments from both sides and heard a full day of submissions, eventually handing down a reserved judgment at a subsequent hearing.

The matter concerned a holiday sickness claim where the Defendant had applied to Strike Out the Claimant’s medical evidence on the basis that his expert didn’t have the requisite expertise to opine upon the illness that he had suffered. A barrage of criticisms were levelled at the expert by the Defendant.

The Judge ultimately accepted the Claimant’s position that issues of the type that had been raised by the Defendant go to the weight that could be attached to the expert’s evidence, rather than it being a question of admissibility; the Defendant can properly deal with its criticisms of the expert’s methodology and expertise in submissions at the subsequent Trial. He found that the ‘expert’ could properly be considered to be such based upon his clinical experience and research. His evidence was admissible as it complied with the test set out by the Supreme Court in *Kennedy v. Cordia* [2016] UKSC 6.

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### **Seabrook v. Adam (Cambridge CC, 06.11.19)**

6.11.2019

Barristers involved: Anthony Johnson

Anthony Johnson (instructed by Clare Tolson of Keoghs) represented the Defendant at the hearing of the Claimant’s appeal against a Costs Order that was largely in the Defendant’s favour that had been made by a Regional Costs Judge at a hearing that took place in January 2019. That hearing itself had been listed to determine costs issues arising from a Fast-Track trial that had taken place in October 2018. The main contentious feature in the case was an unusually worded Part 36 offer made by the Claimant’s solicitors.

The underlying case was a causation dispute in a general damages only personal injury claim where liability had been formally

admitted pre-issue. The Defendant made no formal allegation of fraud but argued that the Claimant had not come up to proof in relation to his alleged injuries: an 8-week neck injury and a 32-month back injury. The Deputy District Judge dealing with the original trial had found that the neck injury was proven but not the back injury, leading to an award of damages of just over £1,500 against a claim of just under £10,000. He had, however, put off the costs arguments to a separate occasion, seemingly due to a lack of available time at the end of the Court day.

At that costs hearing, the Claimant's representatives argued that they had beaten either or both of their two Part 36 offers which stated the following: "To agree the issue of liability on the basis the Claimant will accept 90% of the claim for damages and interest to be assessed" and "To accept, on the condition that liability is admitted by the offeree, 90% of the claim for damages and interest to be assessed." The Defendant argued that these offers did not represent a genuine attempt to settle the claim, as they sought to compromise the issue of liability which had already been formally conceded by the Defendant. However, even if the offers were valid then they had been beaten by the Defendant because the Claimant had recovered well under 90% of the damages that he was seeking from the Defendant. DJ Reeves accepted the Defendant's case at the costs hearing and restricted the Claimant to fixed Fast-Track costs of the underlying claim as the Defendant had argued, along with ordering the Claimant to pay the Defendant's costs of the costs-only hearing on the basis that the situation that had arisen was 'exceptional' pursuant to CPR 45.29J. The Claimant was granted permission to appeal both of these findings.

HHJ Walden-Smith rejected the appeal and found that the District Judge had not erred in his interpretation of the offer. She felt that the determinative factor was that the judgment for the Claimant was not 'at least as advantageous' as his Part 36 proposal for the purposes of CPR 36.17. Given that the existence of the duty of care and breach of duty had been conceded by the Defendant in the Defence, accepting the offer would have to be construed as conceding the final constituent element of the tort of negligence, i.e. that the Defendant caused the Claimant some loss. Accordingly, if the Defendant had accepted the offer then it would not have been open to him to continue to challenge causation, the issue that he was eventually largely successful upon.

Further, any award of damages at all would have to be construed as a discount on the offer because a 10% discount will always be better than 100% of the same thing. If the Claimant's interpretation of the offer was correct then claimants could use such offers to place defendants in an impossible position in all cases where causation was challenged in order to prevent them from continuing to defend claims against the background of any award to the Claimant leading to punitive costs consequences. She commented that whilst she accepted that the purpose of CPR 36 is to limit claims and encourage settlement, it is not a system that is designed to prevent a realistic possibility of a party arguing fundamental principles.

She also upheld Judge Reeves' decision that the costs of the costs arguments were 'exceptional'. She emphasised that the fact that costs were dealt with on a separate day to the Fast-Track trial does not in itself give rise to a finding of exceptionality. However, the case was exceptional because the Claimant's representatives had not had in mind the Overriding Objective pursuant to CPR 1 to decide cases proportionality because they had approached the case excessively by virtue of the factual and legal issues that they had raised.

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## **Seabrook v. Adam (Norwich CC, 22.01.19)**

03/09/2019

Barristers involved: Anthony Johnson

Anthony Johnson successfully represented the Defendant in this costs dispute that arose from a Fast-Track trial that took place in October 2018 where the DDJ had accepted the Defendant's primary case that, largely due to inconsistencies in the medical evidence, the Claimant had failed to prove the 32-month back injury that he had alleged, but had found that the Claimant had proven an eight-week neck injury, awarding him damages of just over £1,500. At a separate costs hearing in front of DJ Reeves (a Regional Costs Judge), the Claimant argued that the Defendant should pay their full costs of over £33,000, principally for the following four reasons: (i) the Claimant had beaten a 90:10 offer on liability made after liability had been conceded; (ii) the Defendant had unreasonably refused to engage in ADR; (iii) the case was 'exceptional' pursuant to CPR 45.29J; and (iv) the Defendant's conduct had been unreasonable in referring to fundamental dishonesty in correspondence but not pleading the same in its Defence and not relying upon the same at trial.

DJ Reeves held that the Claimant should be restricted to fixed costs, referring to the case as a 'perfectly normal, unexceptional, common-or-garden RTA PI claim', and accepting that the Defendant had been entitled to put the Claimant to proof given the obvious inconsistencies in his claim. He held that it was not unreasonable for defendants to put claimants on notice of the possibility of an FD finding even where the same has not been explicitly pleaded, and accepted that it would have been very difficult for the Defendant to make any offer in a situation where the Claimant's prognosis had been 'varying, shifting and altering'.

He found that the Claimant's purported Part 36 offer could not be construed as a genuine attempt to settle the claim given that it related to a matter that had already been conceded 100% by the Defendant- he held that the ordinary, common use of the English language did not support the Claimant's interpretation that liability extended to causation in a situation where the Defendant admitted the former but not the latter. He then held that ADR would not have been realistic or proportionate in a low end Fast-Track claim.

Having successfully resisted the Claimant's arguments, the Defendant was awarded its costs since the date of the original trial on the indemnity basis, which could be set off against the Claimant's full award of damages pursuant to CPR 44.14(1). The Claimant is currently in the process of appealing the decision.

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## **Hodgson v. Kinley**

23.09.2013

Barristers involved: Anthony Johnson

Anthony Johnson (instructed by Patrick Maguire of Silverbeck Rymer) acted for the successful Claimant in an appeal against a trial judge's decision to dismiss a claim where it had been found that the Claimant sustained some injury in the index accident but some injury in a previous accident, and where the medical evidence did not distinguish between the two.

The basis of the decision at first instance had been that the Claimant could not prove that her injury was sustained in the index accident. HHJ Butler accepted that such an approach was illogical and contrary to law, and that instead the judge should have done her best to make some kind of 'rough and ready' assessment based upon whatever limited evidence was available. The fact that it was difficult to quantify damages was not the same thing as it being impossible.

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## **Bourne Leisure v. Shakespeare**

**Unreported**

29.02.2012

Barristers involved: Anthony Johnson

Anthony Johnson successfully represented the Respondent who had slipped on liquid that had been spilled on the dancefloor at the Defendant's Butlins Bognor Regis resort. Butterfield J. upheld the trial judge's decision that the Appellant was liable to the Respondent under section 2(2) of the Occupiers Liability Act 1957 on account of the fact that the Defendant's inspection regime was insufficient, and that the Defendant should have taken some steps, albeit minor ones that would not ruin the atmosphere in the venue, to enforce its policy of preventing guests from taking drinks onto the dancefloor given the obvious risk of spillage. He rejected the Appellant's submissions that the trial judge had imposed too high a duty on the Defendant that was effectively a counsel of perfection, and that any reasonably practicable improvements to the Defendant's system would not have made a difference in any event.

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## **Lawrence v. Kent CC**

**[2012] EWCA CIV 493 - Court of Appeal**

2012

Barristers involved: Simon Browne QC Anthony Johnson

Guidance given by Court of Appeal upon the approach appellate court should take to appeals on questions of contested fact determined by the Trial Judge as opposed to matters of discretion

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## **Kent County Council v. Lawrence**

**[2011] EWHC 1590**

22.06.2011

Barristers involved: Anthony Johnson

Anthony Johnson represented the Claimant in this appeal against a determination in her favour in a tripping claim brought under

the Highways Act 1980. Eady J. held that the trial judge had not misunderstood the nature of the statutory duty and had not applied the wrong test, but that he had taken into account an irrelevant consideration, namely the subjective opinions of eye-witnesses about the danger posed by the defect. This aspect of the decision was subsequently overruled by the Court of Appeal.

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## **Smith v. KRG Transport**

06.02.2010

Barristers involved: Anthony Johnson

Anthony Johnson represented the Defendant in the first appeal of this matter when HHJ Griggs overturned a District Judge's decision that the Claimant had acted reasonably in mitigation of his losses by hiring a vehicle for 285 days in circumstances where he did not use the cheque that he eventually received from the Defendant's insurers to replace his own accident-damaged vehicle.

The matter then came before Holroyd J. for a purported second appeal, but, following a hearing, the Judge formed the view that the High Court lacked jurisdiction to hear such an appeal.

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## **Balls v. St. Edmundsbury Borough Council**

**LTL: AC0122698**

18.06.2009

Barristers involved: Anthony Johnson

As far as the writer is aware, this is the only reported decision dealing with the interpretation of the definition of the term "highway" for the purposes of section 41 of the Highways Act 1980.

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## **Hussain v. Dhawan**

**LTL: AC0119878**

07.11.2008

Barristers involved: Anthony Johnson

Test case in which Anthony Johnson successfully resisted the Claimant's claim for diminution in value on the basis that he had failed to make out his claim, in spite of the fact that an engineer had examined his vehicle and prepared a 'diminution report'. The judgment discusses the considerations that apply to such claims in general.

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## **Good v. De Klee**

**LTL: AC0115494**

30.08.2007

Barristers involved: Anthony Johnson

The District Judge rejected the Claimant's diminution claim on the basis that his 'expert' engineer had not actually examined the vehicle in question, and thus his report was based entirely upon theory and speculation. This was one of the first 'modern' reported cases dealing with a new wave of diminution in value claims.

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## **Publications**

**Anthony Johnson has article published in the March 2020 edition of the Personal Injury Law Journal: Committal where the die has already been cast.**

19/03/2020

Authors: Anthony Johnson

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## Personal Injury Law Journal article: QOCS the Outer Limits - September 2019

10/01/2020

Authors: Anthony Johnson

You can view the publication at <https://www.lawjournals.co.uk/personal-injury-law-journal/counterclaims-qocs-the-outer-limits/>

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## TGC Costs Newsletter Vol V

10/12/2019

Authors: Simon Browne QC James Laughland Shaman Kapoor Lionel Stride Anthony Johnson Richard Boyle Matthew Waszak Ellen Robertson Elizabeth Gallagher James Yapp Harriet Wakeman

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

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

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## TGC Fraud Newsletter Issue X - October 2019

23/10/2019

Authors: James Laughland Lionel Stride Anthony Johnson James Henry Ellen Robertson Elizabeth Gallagher Harriet Wakeman Keith Morton QC

Issue X of the TGC Fraud Newsletter, 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, can be found at the link below.

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

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## Personal Injury Law Journal article: Molodi and Richards a year on - June 2019

03/09/2019

Authors: Anthony Johnson

You can view the publication at

<https://www.lawjournals.co.uk/personal-injury-law-journal/fraud-molodi-and-richards-a-year-on/#more-27811>

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## TGC Costs Newsletter Vol IV

04/06/2019

Authors: Richard Wilkinson Shaman Kapoor Lionel Stride Anthony Johnson Richard Boyle Matthew Waszak Ellen Robertson James Yapp Juliet Wells Harriet Wakeman Olivia Rosenstrom

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

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

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## TGC Fraud Newsletter Issue IX - February 2019

26/02/2019

Authors: Tim Sharpe Anthony Johnson James Henry Ellen Robertson Elizabeth Gallagher

Please see link below for Issue IX 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 Newsletter Issue VI - September 2017

21/09/2017

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

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

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

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## **TGC Fraud Newsletter Issue V - May 2017**

04/05/2017

Authors: Anthony Johnson Tim Sharpe Matthew Waszak Robert Riddell Piers Taylor

Please see link below for Issue 5 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. [TGC Fraud Newsletter Issue V](#)

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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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## **“A Sword and A Shield- awards of exemplary damages in fraud cases”- New Law Journal**

06/12/2013

Authors: Anthony Johnson

This article comments upon the use of exemplary damages claims as another tool in the arsenal of Defendant insurers when faced with a fraudulent Claimant and considers some of the issues that commonly arise in such claims.

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## **“Measuring loss: vehicle diminution claims”- New Law Journal**

16/05/2008

Authors: Anthony Johnson

This article concerns the principles that should be applied to the measure of loss in vehicle diminution matters, an area where claims are commonly presented, but where there has been only limited guidance from the higher courts.

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## **News**

### **Anthony Johnson has article published in the March 2020 edition of the Personal Injury Law Journal: Committal where the die has already been cast**

17/03/2020

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Barristers involved: Anthony Johnson

The article explores the Court of Appeal's recent decision in *Zurich v. Romaine* [2019], and its impact upon insurers contemplating whether to pursue a dishonest litigant for Contempt of Court.

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## **Anthony Johnson Successful in 'Test Case' on the Admissibility of Expert Evidence**

17/01/2020

Barristers involved: Anthony Johnson

The Defendant's Application was treated by both sides as an unofficial 'test case' on both the admissibility of expert evidence in holiday sickness claims in general, and upon the competence of the particular individual (who had prepared reports in over 2,200 similar claims) to act as an expert. The Judge (DJ Ball) had the benefit of very detailed Skeleton Arguments from both sides and heard a full day of submissions, eventually handing down a reserved judgment at a subsequent hearing.

The Judge ultimately accepted Mr. Johnson's position that issues of the type that had been raised by the Defendant went to the weight that can be attached to an expert's evidence, rather than it being a question of admissibility. The Judge found that the 'expert' could properly be considered to be such based upon his clinical experience and research. His evidence was admissible as it complied with the test set out by the Supreme Court in *Kennedy v. Cordia* [2016] UKSC 6. Any issues that the Defendant wished to take with regards to the expert's methodology could be dealt with by submissions at Trial on the weight that could properly be attached to his evidence.

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## **TGC Costs Newsletter**

10/12/2019

Barristers involved: Simon Browne QC James Laughland Shaman Kapoor Lionel Stride Anthony Johnson Richard Boyle Matthew Waszak Ellen Robertson Elizabeth Gallagher James Yapp Harriet Wakeman

Please see link below to the 5th edition of the the TGC Costs Newsletter.

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

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## **Anthony Johnson Successful in Part 36 Offer Appeal**

15/11/2019

Barristers involved: Anthony Johnson

The underlying case was a causation dispute in a general damages only personal injury claim where liability had been formally admitted pre-issue. The Defendant made no formal allegation of fraud but argued that the Claimant had not come up to proof in relation to his alleged injuries: an 8-week neck injury and a 32-month back injury. The Deputy District Judge dealing with the original trial had found that the neck injury was proven but not the back injury, leading to an award of damages of just over £1,500 against a claim of just under £10,000. He had, however, put off the costs arguments to a separate occasion, seemingly due to a lack of available time at the end of the Court day.

At that costs hearing, the Claimant's representatives argued that they had beaten either or both of their two Part 36 offers which stated the following: "To agree the issue of liability on the basis the Claimant will accept 90% of the claim for damages and interest to be assessed" and "To accept, on the condition that liability is admitted by the offeree, 90% of the claim for damages and interest to be assessed." The Defendant argued that these offers did not represent a genuine attempt to settle the claim, as they sought to compromise the issue of liability which had already been formally conceded by the Defendant. However, even if the offers were valid then they had been beaten by the Defendant because the Claimant had recovered well under 90% of the damages that he was seeking from the Defendant. DJ Reeves accepted the Defendant's case at the costs hearing and restricted the Claimant to fixed Fast-Track costs of the underlying claim as the Defendant had argued, along with ordering the Claimant to pay the Defendant's costs of the costs-only hearing on the basis that the situation that had arisen was 'exceptional' pursuant to CPR 45.29J. The Claimant was granted permission to appeal both of these findings.

HHJ Walden-Smith rejected the appeal and found that the District Judge had not erred in his interpretation of the offer. She felt that the determinative factor was that the judgment for the Claimant was not 'at least as advantageous' as his Part 36 proposal for the purposes of CPR 36.17. Given that the existence of the duty of care and breach of duty had been conceded by the Defendant in the Defence, accepting the offer would have to be construed as conceding the final constituent element of the tort of negligence, i.e.

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that the Defendant caused the Claimant some loss. Accordingly, if the Defendant had accepted the offer then it would not have been open to him to continue to challenge causation, the issue that he was eventually largely successful upon.

Further, any award of damages at all would have to be construed as a discount on the offer because a 10% discount will always be better than 100% of the same thing. If the Claimant's interpretation of the offer was correct then claimants could use such offers to place defendants in an impossible position in all cases where causation was challenged in order to prevent them from continuing to defend claims against the background of any award to the Claimant leading to punitive costs consequences. She commented that whilst she accepted that the purpose of CPR 36 is to limit claims and encourage settlement, it is not a system that is designed to prevent a realistic possibility of a party arguing fundamental principles.

She also upheld Judge Reeves' decision that the costs of the costs arguments were 'exceptional'. She emphasised that the fact that costs were dealt with on a separate day to the Fast-Track trial does not in itself give rise to a finding of exceptionality. However, the case was exceptional because the Claimant's representatives had not had in mind the Overriding Objective pursuant to CPR 1 to decide cases proportionality because they had approached the case excessively by virtue of the factual and legal issues that they had raised.

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## **Anthony Johnson has article published in the Personal Injury Law Journal**

01/09/2019

Barristers involved: Anthony Johnson

The September 2019 edition of the Personal Injury Law Journal includes an article by [Anthony Johnson](#) on the topic of QOCS: the Outer Limits in which he examines the costs position in cases where the Defendant has pursued an unsuccessful counterclaim for personal injury.

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## **TGC Costs Newsletter**

04/06/2019

Barristers involved: Richard Wilkinson Shaman Kapoor Lionel Stride Anthony Johnson Matthew Waszak Ellen Robertson James Yapp Richard Boyle Juliet Wells Harriet Wakeman Olivia Rosenstrom  
Please see link below for the 4th edition of the the TGC Costs Newsletter.

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

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## **TGC Fraud Newsletter**

26/02/2019

Barristers involved: Tim Sharpe Anthony Johnson James Henry Ellen Robertson Elizabeth Gallagher

This publication has been set up with the stated aim of facilitating the sharing of information about decided claims involving issues of road traffic fraud and related matters.

You can view the publication at [http://tgchambers.com/wp-content/uploads/2019/02/Newsletter\\_Fraud\\_issue9\\_v3.pdf](http://tgchambers.com/wp-content/uploads/2019/02/Newsletter_Fraud_issue9_v3.pdf)

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## **TGC Fraud Update Issue VI - September 2017**

21/09/2017

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

Please see link below for Issue VI of the TGC Fraud newsletter.

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

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## **TGC Fraud Update Issue V - May 2017**

04/05/2017

Barristers involved: Anthony Johnson Tim Sharpe Matthew Waszak Robert Riddell Piers Taylor

Please see link below for Issue V of the TGC Fraud newsletter.

[TGC Fraud Update Issue V May 2017.](#)

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## **Severely Injured Claimant Recovers £1.14M**

27/03/2017

Barristers involved: Jonathan Watt-Pringle QC Anthony Johnson

The Claimant, a Warehouse Foreman, was injured in an accident at work when a large container fell onto him. The trauma of the accident caused the Claimant to suffer a number of serious psychiatric problems including severe Depression, which eventually became psychotic, Post-Traumatic Stress Disorder, Generalised Anxiety Disorder and Travel Anxiety. His symptoms were so severe that he experienced suicidal thoughts and required emergency admissions to hospital on a number of occasions. He also suffered permanent physical injury to his right wrist which eventually required fusion, and damage to the right optic nerve.

The most challenging feature of the case was the inherent uncertainty about what the future holds for the Claimant, particularly in respect of his future care. Whilst both parties' Consultant Psychiatrists broadly agreed upon the diagnosis, each suggested a different approach to the treatment, and there was a marked difference between them on prognosis.

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## **Appeal Against Decision to Allow Expert Evidence Dismissed**

13/02/2017

Barristers involved: Anthony Johnson

The Claimant, who claims to be suffering a wide array of symptoms as a direct consequence of a road traffic accident, brings a personal injury claim against the Defendants in respect of which causation remains firmly in dispute. Anthony Johnson represented the Defendants at a hotly contested telephone Application hearing where a Deputy District Judge was persuaded to grant them permission to rely upon a desktop report from a Consultant Orthopaedic Surgeon. It was this decision that the Claimant sought to appeal against the outcome of.

The appeal came before Her Honour Judge Williams in the Guildford County Court on 08.02.17, who upheld the Defendants' submissions that the appeal should be dismissed. In a detailed judgment, the Judge accepted the Defendants' case that causation was an issue for the trial judge, and that the evidence in question dealt with a lacuna in the other medical evidence in the case in relation to causation. The original judge had directed herself correctly in relation to the appropriate test under CPR 35.1, which must be viewed in the light of the Overriding Objective pursuant to CPR 1.1. HHJ Williams also reiterated the high legal threshold that parties face when seeking to appeal a case management decision: the Judge making the decision is afforded a generous ambit of discretion.

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## **Personal Injury Claim Settled for £230,000**

20/12/2016

Barristers involved: Richard Wilkinson Anthony Johnson

The Claimant, a 51-year-old Enablement Support Worker, suffered injuries in a road traffic accident that took place on 24.01.12; both parties alleged that the other was at fault. Whilst the Claimant initially experienced symptoms consistent with a whiplash injury to the neck, she went on to develop widespread pain to the rest of her body that eventually became so severe that she required a wheelchair for much of the time. The medical expert evidence relied upon by the Claimant from a Consultant Rheumatologist and a Consultant Psychiatrist identified that she was suffering from a Chronic Pain Syndrome brought on by the trauma of the accident, along with a prolonged Depressive Episode which contributed to the maintenance of her symptoms. The Defendant's experts in the same disciplines accepted that the Claimant was suffering a significant degree of disability, but did not accept that this was brought on as a consequence of her accident-attributable injuries. A further complicating feature was the Claimant being diagnosed with Type 2 diabetes. Had the parties been unable to reach settlement at the JSM then the matter was to be listed for an eight-day trial in early 2017.

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## Personal Injury Claim Settled for £180,000

13/10/2016

Barristers involved: Anthony Johnson Sian Reeves

The Claimant, a 35-year-old Traffic Examiner, suffered a minimally displaced intra-trochanteric fracture of the femur in an accident at work that occurred on 07.12.12 in the course of her employment for the Department for Transport; liability was admitted in May 2013 and the matter proceeded on a causation and quantum only basis. Unfortunately, the Claimant's condition worsened and she began to experience increasing pain, which was subsequently diagnosed as early post-traumatic arthritis of the hip. Orthopaedic experts instructed by both parties agreed that the Claimant would require hip replacement surgery within 2-7 years as a consequence of the accident, and that given her relatively young age she would require one, probably two, revisions of the hip replacement in later life. The Claimant also experienced bladder symptoms of mild urinary incontinence, urinary leakage and urgency, which her urological expert was prepared to tentatively attribute to the accident, although both parties wished to explore this issue further with him and the Defendant intended to obtain its own urological evidence. In addition, the Claimant reported some intrusive psychological symptoms in the form of nightmares and flashbacks.

The matter came to Joint Settlement Meeting (JSM) at a relatively early juncture post-issue, prior to the case management stage; both parties were keen to restrict the costs incurred if at all possible, notwithstanding that the evidence was far from finalised. The Claimant instructed Anthony Johnson for the JSM and the Defendant Sian Reeves. The three main issues between the parties related to the level of general damages, the treatment of the Claimant's pleaded future losses and, most significantly, a claim for future loss of earnings and loss of earning capacity. The major complicating feature in relation to the latter head of claim was that although the Claimant had suffered little loss of earnings to date, she was expected to require lengthy periods off work both before and after hip replacement surgery and revision surgery and, in any event, both parties' experts agreed that she at some disadvantage on the open market and thus eligible for a Smith v. Manchester award. Following extensive negotiations, the parties were pleased to agree a settlement figure of £180,000.

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## 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.

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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 the dramatis personae will 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.

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## **Fatal Accidents Claim Settles for £350,000**

20/11/2015

Barristers involved: Anthony Johnson

Anthony Johnson, instructed by Oliver Bowes-Smith of DWF LLP, represented the Defendant via its insurers, Aviva, in a claim arising from a motorcycle accident in which the Claimant's husband sadly died. The claim settled by negotiation at a figure of £350,000 following written Advice from Counsel and the exchange of pleadings. The assessment of damages in this matter pursuant to the Fatal Accidents Act 1976 and the overall settlement value of the claim were far from straightforward. Liability was in dispute and there was competing accident reconstruction evidence. A large amount of evidence and paperwork had been generated by the earlier inquest into the death. The Deceased, who was aged 36 at the date of the accident, was a respected Army helicopter trainer, but much of the dependency claim was based upon his notional earnings in a civilian capacity if and when he left the Army. The Deceased had been diagnosed with a pulmonary lung condition shortly before his death. It was argued on the Claimant's behalf that she only had limited capacity for part-time work.

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