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James Arney QC

Year of Call: 1992
Year of Silk: 2021

Practice Areas

- Costs
- Personal Injury

Public Access

Undertakes Public Access work

Email:

jarney@tgchambers.com

Awards

Experience

Cited since 2009 in the Legal 500, previously as a "Leader of the Bar" in costs work in Chambers UK, and recently awarded "Personal Injury Junior of The Year" in Chambers and Partners 2019, James is invariably instructed in high-value litigation. James currently has an exclusively Personal Injury practice, split evenly between Claimant and Defendant instructions. Claim values are generally 7-figures, often appearing against silks. Defendant clients include Admiral Insurance (with claim values of up to £15m) and John Lewis: Claimant clients include Leigh Day, Irwin Mitchell, Admiral Law and Slater & Gordon. Written work includes schedules, counter schedules and skeletons. In addition to regular interlocutory appearances, James has also successfully conducted 7 substantial liability and/or quantum trials in the last 18 months.

Quantum analysis lies at the heart of James' work for either side, combining forensic analysis of the evidence with sound tactical judgment. Repeat instructions are attributed to the ability to relate to and mange lay clients from all walks of life, as well as a 'team approach' to litigation. James' Defendant work benefits from his ability to package detailed advice in a format which insurers appreciate. Results in negotiations are a product of thorough preparation, sound judgment and second-guessing opponents.

James is currently involved in the accommodation claims test case appeal in Swift v Carpenter, having successfully

conducted the quantum trial at first instance in 2018 resulting in an award of ~£4.1m for the amputation injury.

In 2019 he was also successful:

- In Mohmed v Barnes: defending a claim against a driver who ran over the claimant to escape attack; and
- In Gale v Esure: establishing that a claimant had sustained a traumatic brain injury.

Directories

Dual expert in personal injury and costs litigation with a hefty caseload relating to serious injuries, fatal accidents, and amputation cases. He acts for both claimants and defendants and has notable experience in RTA cases. The pragmatic advice that he is able to provide in relation to quantum is much appreciated by sources.

Strengths:

Awarded 'Personal Injury Junior of The Year'
Chambers & Partners 2019

"Brilliant in joint settlement meetings and very strong tactically." "A delightful opponent who is very good on costs."
Chambers & Partners (personal injury) 2018

"A formidable advocate, who combines tenacity with charm."
Legal 500 (personal injury) 2017

"…He has very impressive tactical nous and ability."
Band 2 Legal 500 (personal injury) 2015

Cited as 'Leader at the Bar' in the field of costs
Chambers & Partners 2011 and 2012

'…careful and convincing advocate'
Chambers and Partners (costs) 2012

'…a classic pair of safe hands'
Legal 500 (personal injury) 2011

'….a very good up-and-coming barrister in this field"
Legal 500 (costs) 2011

'…praised for his sensible and tactical advice and confident advocacy'
Legal 500 (costs) 2009

'…good in this area, and on costs'
Legal 500 (personal injury) 2009

Education
LLB (2:1) Bristol University

Memberships
Personal Injury Bar Association
Bar Golfing Society

Cases

B v R

Resolved at Mediation in January 2022

Barristers involved: Lionel Stride James Arney QC
Lionel Stride (instructed by Rebecca Smith at Stewarts and closely assisted by James Arney QC in preparation for the mediation) represented the passenger (a qualified pilot) in a High Court claim arising out of a light aircraft accident, allegedly caused by the negligence of the pilot in command. The pilot undertook an orbit rather than a go-around at too low an altitude and speed, causing the aircraft to stall and crash. The Claimant, a successful businessman, suffered a spinal cord injury and is now a paraplegic. His claim included lifelong care, accommodation, a range of mobility scooters and wheelchairs, together with walking aids, and a significant claim for loss of profit and the capital value of his business (which he had to sell at an undervalue as part of a management buyout due to the need to take early retirement).

The Defendant's insurers denied liability, contending that the manoeuvre was not negligent and the pilot acted reasonably to avoid conflict with another aircraft; that the Claimant was equally culpable because he was effectively operating as a co-pilot or functioning member of the crew, assisting the pilot with any observations; and/or that he had consented to the risk of injury and/or the manoeuvre performed. Quantum was also fiercely disputed, despite the severity of the injury, with focused challenge to the claim for loss of profit and capital value. The claim settled at circa £4 million (i.e., at or close to the indemnity limit on the insurance policy), the Claimant electing not to pursue the pilot for any additional sum.

Accommodation Claims: Swift v Carpenter: Court of Appeal decision

09.10.2020

Barristers involved: James Arney QC
James Arney appeared as sole counsel in the quantum trial in 2018, and was led on this appeal by Derek Sweeting QC, instructed by Grant Incles of Leigh Day & Co.

This case involved re-consideration of the mechanism for assessing the loss to a claimant of having to fund the purchase of special alternative accommodation. The previous mechanism, derived from the decision in *Roberts v Johnstone* [1989] QB 878, was challenged as being "unfit for purpose", both by reason of the current negative discount rate which produced a nil valuation in all cases, and more generally.

In this long-awaited landmark decision, the Court of Appeal has held that *Roberts v Johnstone does* not give full and fair compensation and should be replaced. Instead a new mechanism has been created, based upon calculating the "market value" of the notional reversionary interest (using a +5% investment rate), which is to be deducted from the full capital value of the increased cost of the special accommodation.

This decision impacts on the vast majority of high value personal injury claims, significantly increasing the awards that claimants will achieve.

Gale v ESURE

08.07.2020

Barristers involved: James Arney QC
James Arney, instructed by Christopher Kardahji of Irwin Mitchell, acted for the Claimant in a 4-day quantum hearing. The Claimant sustained a serious ankle injury and had been affected psychologically as a result of her accident. The Claimant and the Defendant were £460,000 apart in their assessment of damages. HHJ Hedley held that the Claimant had suffered a mild traumatic brain injury. The Defendant's psychiatrist, Dr Holden, was heavily criticised. HHJ also awarded long term commercial assistance for care of the Claimant's animals.

Following the accident, the Claimant struggled with the daily care of her horses, as well as heavier domestic tasks. Hedley J. held that given that the object of compensatory damage is to put the Claimant into a position she would have been in but for the accident, she should be enabled to continue to pursue her major life hobby and interest. It would be unreasonable to expect the Claimant to give up her horses.

Judgement was awarded for the Claimant in the sum of £480,731.72, beating the Claimant's own Part 36 offer. The Defendant incurred Part 36 penalties in respect of damages, interest and costs.

The final amount awarded was £536,628.10.

Scott v Reed and Wiltshire Council

01.11.2019

Barristers involved: James Arney QC
James Arney, on instructions from Adrian Cottam of DAC Beachcroft for Admiral Insurance, acted on behalf of the 1st Defendant, in a head-on collision liability trial. The case was heard by Gavin Mansfield QC in the High Court over 6-days. Dispute centred on which side of the road the accident occurred. No issue of contributory fault arose: the claim was all or nothing. Judgment held that the Claimant had crossed into the 1st Defendant's lane, dismissing the claim.

Conditions were poor at the time of the accident, giving rise to the claim against the 2nd Defendant, Wiltshire Council, for allegedly inadequate drainage systems in breach of s.41 Highways Act 1980.

Mansfield J. held on the balance of probabilities and on the evidence presented to the Court, the point of impact was on the 1st Defendant's side of the road. Whilst the 1st Defendant had overtaken a Transit van at speed on a bend, fishtailing in the wet conditions, he returned to his lane prior to the impact with the Claimant. Given that finding, the Claimant must have crossed at speed from his own carriageway into the path of the 1st Defendant's BMW.

Mr Scott's claim against Mr Reed failed and was dismissed, with judgment to the 1st Defendant on his counterclaim and costs.

The Claimant's claim against the Council also failed.

Luxton v Raja

[2019] EWHC 644 (QB)
19.03.2019

Barristers involved: James Arney QC
James Arney, instructed by Adrian Cottam of DAC Beachcroft, acted for the Defendant in a 2-day liability trial against Stephen Killalea QC. The case was heard by Rowena Collins Rice J in the High Court. The Defendant was travelling at 42-45mph along a 30mph town street on approach to a zebra crossing next to Byron Primary School at 3.50pm. The Claimant turned across the Defendant's path, resulting in her car being 'T-boned' by the Defendant's approaching car. Liability was apportioned 50/50.

Collins Rice J. was clear that there must be a measure of responsibility on both drivers for this accident regarding 'causative potency' and 'blameworthiness' of each driver's conduct.

It was held not to be unreasonable to travel at the 30mph limit rather than at a lower speed. Whilst the Defendant's driving was excessive, the nature and level of the speeding made it misjudged rather than reckless and flagrant. The Claimant instead of waiting, pulled out, across the Defendant's right of way, in circumstances where he could not avoid hitting her. Each created a considerable hazard for the other. It was the combination of the Defendant's unsafe speed and the Claimant's unsafe timing which set in motion an accident neither of them could then avoid.

The Defendant recovered the cost of the liability trial, having previously made an effective Part 36 offer at the 50/50 level awarded.

Mohmed v Barnes and EUI Limited

[2019] EWHC 87 (QB)
21.01.2019

Barristers involved: James Arney QC
James Arney, instructed by Horwich Farrelly, acted for the Defendants in a 3-day trial relating to liability only, against Richard Norton. The Defendant collided with the Claimant pedestrian in the car park of McDonald's, causing him serious injuries

The Defendant was one of a mixed group of young adults who attended McDonald's in two cars. An altercation ensued between the Defendant's group and a large group of young Asian males. The Defendant's group returned to their respective vehicles, followed outside by a number of those males. The Asian males, joined by the Claimant's friend from a nearby parked car, surrounded the Defendant's vehicle, shouting and attempting the remove the Defendant and his passengers from the vehicle.

The Claimant had exited his vehicle allegedly to calm down his friend and was by now positioned in front of the Defendant's car. Fearing for his safety and that of his female passengers, hoping and expecting that the Claimant would move out the way, the Defendant floored his accelerator to escape the attacking group.

Mr Justice Turner held that the Defendant was in genuine fear for his safety and that of his two female passengers. These were not circumstances in which the reasonable man could be expected to weight to a nicety the relative risks involved in choosing between the options open to him. The fact that he accelerated away at speed was reasonable and understandable in these particular circumstances. The Defendant acted in a way which did not fall below the standard of a reasonable driver placed in the threatening and rapidly developing situation in which he found himself.

James Arney also successfully resisted the Claimant's attempt, late in the trial, to exclude hearsay evidence of onlookers who had witnessed the episode. Turner J ruled that having agreed to their inclusion in the trial bundle, the Claimant was unable to prevent reference to these documents.

Swift v Carpenter

[2018] EWHC 2060 (QB
06.07.2018

Barristers involved: James Arney QC
James Arney, instructed by Grant Incles from Leigh Day, appeared on behalf of a 43-year-old Claimant who suffered a below the knee amputation as an RTA passenger. Damages were secured for £4.1 million at the quantum only trial. William Audland QC appeared on behalf of the Defendant.

James Arney, instructed by Grant Incles from Leigh Day, appeared on behalf of a 43-year-old Claimant who suffered a below the knee amputation as an RTA passenger. Damages were secured for £4.1 million at the quantum only trial. William Audland QC appeared on behalf of the Defendant.

The Claimant recovered damages for 5 different prosthetic limbs: a primary microprocessor limb, an alternate everyday limb with cosmesis, a water activity limb with cosmesis, a running blade and ski limb.

The Claimant was awarded sports massage therapy (claimed at £72,626) for life, in addition to physiotherapy and other treatments.

She was also awarded the cost of flight upgrades for herself and her family (based on one long haul and two short haul flights per year), the court accepting that the Claimant would in her uninjured state have travelled with her husband and children and it is reasonable to permit her to do the same post-accident. Flight upgrades for the children were awarded until they reached 18, including those for a child not yet conceived (£243,877 awarded).

The case has proceeded on appeal as the test case against the Roberts v Johnstone formula for quantifying loss relating to the purchase of special accommodation, the court at first instance having found that she needed an additional £900,000 to purchase a suitable property. The trial judge felt compelled to award no loss under this head due to the negative discount rate.

Led by Derek Sweeting QC of 7 Bedford Row, James Arney continued to represent the Claimant at the appeal hearing heard in late June 2020 by the Court of Appeal consisting of Lord Justice Irwin, Lord Justice Underhill and Lady Justice Davies. Judgement is currently awaited.

Hicks v Personal Representatives of Ionel Rostas (Deceased) & Motor Insurance Bureau (2017)

QBD (Judge Reddihough) 17/03/2017 Lawtel 21/3/17
17.03.2017

Barristers involved: James Arney QC
Acting on behalf of the Defendant insurers, James Arney successfully argued that notwithstanding delays in disclosing other surveillance footage until 2 months before a trial window, it was in the interest of justice to allow the Defendant to rely on footage disclosed 8 months previously, suggesting that the Claimant was significantly more capable than he had reported. The trial window, scheduled for just 5 weeks after the application was heard, was vacated in order to do justice in the case, and avoid potential overcompensation. The penalty for late disclosure was that only the claimant could rely on the later footage, as well as in costs.

Gilbert v Jagodic

07.03.2017

Barristers involved: James Arney QC
Instructed by Irwin Mitchell, James Arney secured a £650,000 settlement on behalf of a 55 year-old care worker who sustained severe leg and ankle injuries in an RTA. The claim was originally pleaded at about £737,000, but increased to just over £900,000 following the discount rate change to -0.75%. Settlement negotiations proceeded expressly on the basis that the new discount rate be used without adjustment.

Knauer v The Ministry of Justice

13.12.2016

Barristers involved: James Arney QC
A costs dispute arose following the conclusion of Knauer v The Ministry of Justice, the long-awaited case which provided the Supreme Court with an opportunity to correct Cookson v Knowles as to multipliers in fatal accident claims. Contested costs matters included the appellant’s entitlement to recover success fees at 100% notwithstanding the agreement between the parties that no trial costs would be recoverable, as well as a number of line by line issues. Instructed by Charles Lucas & Marshall, James Arney negotiated a satisfactory settlement on behalf of the appellant, consistent with the 100% uplift being recovered.

Rutter v Nichols

May 2015

Barristers involved: James Arney QC
£800,000 settlement for a claimant who sustained multiple injuries when she, her friend and her sister were run down by a motorist.

James v Ireland

[2015] EWHC 1259 (QB)
06.05.2015

Barristers involved: James Arney QC
Successful costs appeal, establishing that a trial had not "commenced" for the purpose of triggering a 100% fixed uplift, despite the parties, their witnesses and advocates attending for 1.5 days on the date fixed for trial. Successive adjournment applications were found to have been merely procedural, and did not constitute a trial.

Garner v Lee

November 2014

Barristers involved: James Arney QC
Defending a brain injury case pleaded at over £3m – settlement at just over £1.1m. This case also involved a contested cost budgeting dispute as to whether provision for representation by a silk ought to be made within the budget.

Dr. Deer v Oxford Uni & Anr

October 2014

Barristers involved: James Arney QC
Contested costs proceedings concerning misconduct allegations

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Elmy v N. E. Demolition

June 2014

Barristers involved: James Arney QC
Defending catastrophic claim – settlement in the region of £3m including PPO

Purton v Aviva & Anr

June 2014

Barristers involved: James Arney QC
£750,000 settlement secured shortly before trial for an ankle injury sustained by a high level chef. He had returned to work since the accident, including a role in which he was earning more than he had pre-accident. The award reflected his damaged career prospects, supported by expert employment evidence and in accordance with Ogden 7 principles.

Dau Chi Chong v Funafloat Ltd t/a College Cruisers, British Waterways Board

[2013] EWCA Civ 212, 2013 WL 128677
31/01/2013

Barristers involved: James Arney QC

After successfully defeating a £5m personal injury claim whilst acting alongside Andrew Prynne QC on behalf of the British Waterways Board, James Arney appeared in the Court of Appeal on related costs matters. Reversing the trial judge's exercise of discretion, the Court of Appeal reinforced the general rule that costs should follow the event. Accordingly as between the defendants the defendant/Part 20 claimant must pay only the costs in the Part 20 claim, leaving both defendants to look directly to the (partly impecunious) claimant to meet the costs of the main action.

Raggett v The Society of Jesus Trust 1929 for Roman Catholic Purposes

[2012] EWHC 3132 (QB)
09/11/2012

Barristers involved: James Arney QC
14-day High Court trial on behalf of a former partner of a city solicitors firm who was sexually abused as a child at school. James' role focussed on presenting the £4.5m quantum claim in the event that the claimant had been able to establish a causative link between the abuse and his subsequent professional failings as an adult. Ultimately that claim failed for reasons of medical causation, thereby restricting the value of the claim to more modest proportions commensurate with the injury suffered and treatment thereof. This claim is of significance in emphasising the difficulty in establishing a causative link between childhood abuse and subsequent personality traits.

Dau Chi Chong v Funafloat Ltd t/a College Cruisers, British Waterways Board

Lawtel 26/4/12
26/04/2012

Barristers involved: James Arney QC Andrew Prynne QC
James Arney appeared in the Queen's Bench Division District Registry, Coventry, led by Andrew Prynne QC and successfully defeated a claim pleaded at over £5m for brain injuries sustained while on a canal boat holiday.

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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TGC Clinical Negligence newsletter

22/03/2021

Authors: Simon Browne QC James Arney QC James Laughland Lionel Stride Anthony Johnson Helen Nugent Richard Boyle James Yapp Olivia Rosenstrom
Welcome to the inaugural edition of the TGC Clinical Negligence newsletter, a twice-yearly publication containing articles on recent key legal developments in this field, as well as a selection of recent noteworthy cases in which Members of Chambers have been involved.
You can view the publication at https://tgchambers.com/wp-content/uploads/2021/03/TGC067_Clin_Neg_Newsletter-Final.pdf

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TGC Costs Newsletter

17/05/2018

Authors: James Laughland James Arney QC Paul McGrath Lionel Stride Sian Reeves Richard Boyle Matthew Waszak Ellen Robertson
Please see link below to the latest TGC Costs Newsletter.
You can view the publication on our website http://tgchambers.com

When has a trial commenced pursuant to CPR 45?

20/05/2015

Authors: James Arney QC
James Arney discusses the High Court judgment in James v Ireland which considers when a trial has commenced, so as to trigger an automatic entitlement to a 100% success fee.
You can view the publication at http://blogs.lexisnexis.co.uk/dr/when-has-a-trial-commenced-pursuant-to-cpr-45/

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

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Circa £4 million settlement at mediation for the Claimant in a High Court paraplegic claim arising out of a light aircraft accident in November 2017

01/02/2022

Barristers involved: Lionel Stride James Arney QC
Lionel Stride (instructed by Rebecca Smith at Stewarts and closely assisted by James Arney QC in preparation for the mediation) represented the passenger (a qualified pilot) in a High Court claim arising out of a light aircraft accident, allegedly caused by the negligence of the pilot in command. The pilot undertook an orbit rather than a go-around at too low an altitude and speed, causing the aircraft to stall and crash. The Claimant, a successful businessman, suffered a spinal cord injury and is now a paraplegic. His claim included lifelong care, accommodation, a range of mobility scooters and wheelchairs, together with walking aids, and a significant claim for loss of profit and the capital value of his business (which he had to sell at an undervalue as part of a management buyout due to the need to take early retirement).

The Defendant's insurers denied liability, contending that the manoeuvre was not negligent and the pilot acted reasonably to avoid conflict with another aircraft; that the Claimant was equally culpable because he was effectively operating as a co-pilot or functioning member of the crew, assisting the pilot with any observations; and/or that he had consented to the risk of injury and/or the manoeuvre performed. Quantum was also fiercely disputed, despite the severity of the injury, with focused challenge to the claim for loss of profit and capital value. The claim settled at circa £4 million (i.e., at or close to the indemnity limit on the insurance policy), the Claimant electing not to pursue the pilot for any additional sum.

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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James Arney QC & Nicholas Moss QC are formally sworn in at Westminster Hall.
01/11/2021

Barristers involved: James Arney QC Nicholas Moss QC
Both James and Nick were able to celebrate the occasion in Chambers with family, friends and colleagues.

This fabulous picture below was taken by Sebastian Arney, aged 10!

TGC Clinical Negligence Newsletter
22/03/2021

Barristers involved: Simon Browne QC James Arney QC James Laughland Lionel Stride Anthony Johnson Helen Nugent Richard Boyle James Yapp Olivia Rosenstrom
This will be a twice-yearly publication containing articles on recent key legal developments in this field, as well as a selection of recent noteworthy cases in which Members of Chambers have been involved.

You can view the publication at https://tgchambers.com/wp-content/uploads/2021/03/TGC067_Clin_Neg_Newsletter-Final.pdf

James Arney & Nicholas Moss – Queen's Counsel
15/03/2021

Barristers involved: James Arney QC Nicholas Moss QC
Although the ceremony scheduled to take place today in Westminster Hall has been postponed until later in the year, James and Nick officially become Queen's Counsel today.

All at TGC wish to extend their congratulations.

£5.25 million settlement secured for 18 year old Claimant
18/02/2021

Barristers involved: James Arney QC
The Claimant, who was 18 at the time of the accident in 2013, was involved in a road traffic collision. After pursuing all viable alternatives, the Claimant underwent an elective amputation nearly 6 years post-accident. She sustained other injuries, including to her remaining lower limb.

This settlement follows closely the approach in the successful first instance decision of Lambert J in Swift v Carpenter, in which James Arney ultimately secured damages of over £4.9 million for the amputee Claimant in her 40's (increased from the original £4.1m award after successfully displacing the dysfunctional Roberts v Johnstone formula for accommodation claims in the Court of Appeal.

As in Swift, the Claimant sought damages multiple prostheses: in this instance (a) primary limb; (b) alternate everyday limb; (c) water activity limb; (b) dedicated sports limb, with lifelike cosmeses where appropriate. Drawing heavily on the awards in Swift, the Claimant's claims also included: –

- Specialist equipment to enable to maintain her pre-accident sporting interests;
- Holiday claims for upgraded flights and increased accommodation and other transportation costs for the Claimant and her future family;
- Loss of earnings and pension referable to her intended career as a paramedic;
- Transportation costs including a larger vehicle to accommodate mobility aids and motorcycle adaptations;
- Equestrian services for the Claimant's current horse and future replacements;
- Household services;
- Care and case management, including future assistance with childcare;
- Full time care in the last years of life;
- Accommodation, including a Swift award for single level housing;
- Aids and equipment; and
- Lifelong therapies and gym membership;

Following closely in time and approach from the judgment of Lambert J in Swift, this settlement helps cement the true value of amputation claims.

The award was the largest to date for the young but expanding Claimant firm, Admiral Law – though they are understood to have larger claims in the pipeline.

An anonymity order for both parties is expected to be granted.

Two New Silks for TGC

17/12/2020

Barristers involved: James Arney QC Nicholas Moss QC
This prestigious accolade is an outstanding achievement and James' and Nick's appointment as Queen's Counsel evidences the strength and depth of Temple Garden Chambers in all of our practice areas and confirms Chambers' position as a market leading set.

The Ceremony, which is scheduled to take place in Westminster Hall on Monday, 15 March 2021, has been postponed until further notice.

Swift v Carpenter: permission to appeal refused, and Respondent to pay costs.

06/11/2020

Barristers involved: James Arney QC
It is understood that the Respondent is considering renewing that application before the Supreme Court.

James Arney, led by Derek Sweeting QC on the appeal, instructed by Grant Incles of Leigh Day.

The Judgment can be found below.

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

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Swift v Carpenter: The Inside Story

09/10/2020

Barristers involved: James Arney QC
Following the successful outcome of the landmark decision in Swift v Carpenter, replacing the Roberts v Johnstone formula and securing over £800,000 for Mrs. Swift, Derek Sweeting QC and James Arney discuss the case from the claimant's perspective.

For more info, and registration please click through to the link below.

You can view the publication at https://attendee.gotowebinar.com/register/5544993679674973710

PERSONAL INJURY: ACCOMMODATION CLAIMS: SWIFT v CARPENTER: Court of Appeal decision

09/10/2020

Barristers involved: James Arney QC

This case involved re-consideration of the mechanism for assessing the loss to a claimant of having to fund the purchase of special alternative accommodation. The previous mechanism, derived from the decision in *Roberts v Johnstone* [1989] QB 878, was challenged as being "unfit for purpose", both by reason of the current negative discount rate which produced a nil valuation in all cases, and more generally. In this long-awaited landmark decision, the Court of Appeal has held that *Roberts v Johnstone* does not give full and fair compensation and should be replaced. Instead a new mechanism has been created, based upon calculating the "market value" of the notional reversionary interest (using a +5% investment rate), which is to be deducted from the full capital value of the increased cost of the special accommodation. This decision impacts on the vast majority of high value personal injury claims, significantly increasing the awards that claimants will achieve.

Background

Mrs. Swift secured ~£4.1m for amputation and other injuries at a contested quantum trial before Lambert J in 2018. The judge found that Mrs. Swift needed to acquire special accommodation costing £900,000 more than her existing home, but awarded nil damages under that head of loss, finding herself bound to do so by the *Roberts v Johnstone* formula. The narrow scope of the appeal challenged that nil finding, for which Lambert J granted permission to appeal.

As acknowledged in the judgment, there has long been widespread concern as to the effect of the *Roberts v Johnstone* approach, intensified by (though not limited to) the negative discount rate producing a nil award.

This was the first time that these concerns had been fully considered by the Court of Appeal, previous challenges being compromised. The Personal Injuries Bar Association were granted permission to intervene. Mrs. Swift's appeal was initially listed for hearing in July 2019, but was adjourned for evidence to be procured from economists, actuaries, mortgage experts and experts in the valuation of reversionary interests. The Court of Appeal ultimately heard submissions and live evidence from several of these expert disciplines, over 3 days of video link hearing in June 2020.

Mrs. Swift's first challenge was to persuade the Court of Appeal that it had the power to revisit its own previous decision in *Roberts v Johnstone*, having regard also to the House of Lords decision in *Wells v Wells* [1999] 1 AC 34.

As to whether it should exercise any such power, Mrs. Swift needed to demonstrate that the *Roberts v Johnstone* did not meet the objective of fair and reasonable compensation, and that a workable alternative could be devised which addressed the desire to avoid conferring a windfall on the Claimant's estate on her death.

Practical implications

This decision will impact negotiations and awards in all large personal injury cases in which accommodation claims are presented. For years this issue has been shrouded in controversy, with settlement figures regularly departing from the strict position of a nil award. This decision brings clarity and certainty.

The new mechanism, presumably to be called a "*Swift v Carpenter*" award, will cause schedules to be revised and settlement expectations to be revisited.

In longer life cases, claimants will recover the majority of the "full capital value". Mrs. Swift (with life expectancy at 45.43 years) recovered 89.1%. Using the paradigms put before the Court in this appeal as examples, a 30-year life expectancy gives recovery at 76.86%, but a 7-year life expectancy would produce an award at just 28.93%.

Practitioners wanting to understand the new approach will be informed by the following:

Calculation for the award of damages for the cost of purchasing a suitable property in the Appellant's case

- Cost of the property now required as per the judgment of Lambert J: £2,350,000
- Value of the Claimant's existing property per Lambert J: £1,450,000
- Capital shortfall: £2,350,000 – £1,450,000 = £900,000
- Claimant's life expectancy per Table 2: 45.43

- Value of the reversionary interest: £900,000 x 1.05 -45.43 = £98,087
- Damages award: £900,000 – £98,087 = **£801,913**

The Court's award is consistent with using a +5% column from Table 35 of the 8th Edition of the Ogden Tables. It is anticipated that the applicable +5% discount rate tables will soon be made available to assist practitioners' calculations.

Query whether the reference to "*longer life cases*" leaves open the possibility that a different solution may be preferable in short life cases. Such claimants may still suffer a significant shortfall which potentially prevents them from purchasing the special accommodation they are adjudged to need, unless they are actually able to sell the reversionary interest to bridge the shortfall.

Also, the +5% rate used in the new formula may be subject to future evolution as a more robust market for reversionary interests potentially develops in response to this decision. For now, however, the guidance given and formula/rate used in this appeal are expected to be applied at first instance, and to "endure".

The Court's decision

Firstly, the Court of Appeal held that it had the power to intervene. Whilst *Roberts v Johnstone* applied, it did so as "*authoritative guidance…in the specific conditions prevailing at the time of the decision*". Where such guidance was now ineffective in achieving full compensation without over-compensation, then the Court of Appeal can revisit and alter such guidance.

The Court concluded that the *Roberts v Johnstone* formula does not provide full, fair or reasonable compensation.

The Court rejected the Respondent's cash-flow approach, which had attempted to use actuarial analysis and predictions of future house price growth to contend that Mrs. Swift was unlikely to suffer any loss.

The Court held that a workable alternative could be achieved by assessing the notional value of a reversionary interest in the increased value of Mrs. Swift's home, and deducting this from the additional sum required to leave the net value of Mrs. Swift's life interest.

The Court preferred a "market valuation" of the reversionary interest, settling on a +5% discount rate as reflecting the investment return that an investor would seek.

The guidance now given in *Swift v Carpenter* is expected to be "enduring", particularly in long life cases during conditions of negative or low discount rates.

For Mrs. Swift, the outcome is that she recovers £801,913, in addition to the ~£4.1m award at first instance.

The decision costs issues, and on the Respondent's application for permission to appeal, have been deferred for 14 days.

Case details:

This appeal was heard remotely by the Court of Appeal, Civil Division. The Judges were: Lord Justice Underhill (Vice-President of the Court of Appeal); Lord Justice Irwin and Lady Justice Nicola Davies DBE.

The date of judgment was 9 October 2020.

Claim struck out for abuse of the MOJ/Part 8 process

29/07/2020

Barristers involved: James Arney QC

The case started life unexceptionally, with seemingly modest injuries and entry into the Portal process at a time when the maximum value limit was £10,000. In due course medical evidence indicated that the claim's value was likely to exceed the £10,000 limit, yet the claim was retained within the Portal with the usual stay of proceedings, thereby preventing the defendant insurers from actively participating in the litigation or obtaining information about the progress of the claim.

In early 2019 the claimant successfully applied to transfer the proceedings to Part 7, a step that will often end any complaint a defendant may have about improper use of the Portal process. However, the claimant then served a schedule alleging chronic pain and pleading the claim at over £760,000, fuelled largely by a future loss of earnings claim about which the Court and defendant knew nothing when the order to transfer to Part 7 had been made. After the defendant's call in its defence for an explanation went unanswered, the defendant applied to strike out the claim.

The Application was hard fought between two members of TGC at a 4-hour remote video hearing before DJ Avent at Central London CC. The defendant relied on the previous decisions of Lyle v Alliance Insurance plc [2017] and Cable v Liverpool Victoria Insurance Company [2019] in which defendants had successfully challenged claims that had been improperly "parked" in the Portal.

In a carefully considered and thorough 69 page judgment, DJ Avent considered the specifics of Mrs. Tandara's case, previous decisions and the more wide-reaching principles that the application engaged. He concluded that the abuse in this case was worse than that of either Lyle or Cable, and struck out the claim, notwithstanding both the admission of liability and the potential value of the recently pleaded case. The defendant's legitimate calls for information and action had been ignored or evaded, causing significant prejudice. The defendant's warnings in correspondence as to the consequences of inaction went unheeded.

Given the detail of the reasoning, the judgment makes for essential reading for anyone considering, or engaged in, an application to strike out claims for abuse of the Portal process.

Link to judgment can be found here.

Success for James Arney at the Chambers UK Bar Awards 2019

01/11/2019

Barristers involved: James Arney QC

High Court RTA claim dismissed following head-on collision involving fatality and serious injuries to others

01/11/2019

Barristers involved: James Arney QC
The claim arose out of a road traffic accident between the Claimant (Mr Scott), driving an Audi A6 and the 1st Defendant (Mr Reed), driving a BMW 118d. Mr Scott claimed the collision was caused by Mr Reed losing control of the BMW; he sued for negligence.

Conditions were poor at the time of the accident, with prolonged heavy rain leading to the road surface being wet (giving rise to the claim against the 2nd Defendant, Wiltshire Council, for inadequate drainage systems in breach of s.41 Highways Act 1980).

The collision between the Claimant and 1st Defendant occurred on a bend in the road. The Claimant's Audi continued along the road and collided with a second vehicle heading in an easterly direction: a Ford Transit van. The Transit van was the next vehicle behind the 1st Defendant, the BMW having overtaken the van at speed shortly before the accident occurred. Tragically, one of van's passengers was killed, others were injured. The Claimant was prosecuted for the offence of causing death by careless driving; but was acquitted at the criminal trial.

The key issue between the Claimant and the 1st Defendant was: which driver lost control of their vehicle? The parties agreed that if the collision took place on the Claimant's side of the road then the 1st Defendant must have lost control and would be liable. Conversely, if it took place on the Defendant's side of the road then the Claimant must have lost control and his claim would fail. No issue of contributory fault arose: the claim was all or nothing.

The Claimant by reason of the traumatic brain injury he sustained in the accident, had no recollection of the accident and the events leading up to it.

The Court heard from accident reconstruction experts, as well as drivers of all 3 vehicles involved. Reconstruction issues considered:

· The degree of rotation imparted to the BMW and the Audi from their offset frontal impact;

· The positioning and nature of the disturbances to each verge;

· Markings to the road surface; and

· Sight lines to the point of impact from the van driver witness.

Mansfield J. held on the balance of probabilities and on the evidence presented to the Court, the point of impact was on the 1st Defendant's side of the road. Whilst the 1st Defendant had overtaken the Transit van at speed on a bend, fishtailing in the wet conditions, he returned to his lane prior to the impact with the Claimant. Given that finding, the Claimant must have crossed at speed from his own carriageway into the path of the 1st Defendant's BMW.

Mr Scott's claim against Mr Reed failed and was dismissed, with judgment to the 1st Defendant on his counterclaim.

The Claimant's claim against the Council also failed.

Chambers Bar Awards 2019

05/09/2019

Barristers involved: James Arney QC Fiona Canby
TGC are delighted to announce that they have been shortlisted for the following categories at this year's forthcoming Chambers Bar Awards:

Personal Injury:
Set of the Year
Junior of the Year – James Arney

Health and Safety:
Junior of the Year – Fiona Canby

Many congratulations to James and Fiona for all their hard work, and well done to all in the PI team who have all contributed to this nomination.

The award ceremony will take place on 31 October 2019.

Mild Traumatic Brain Injury Established. Dr Holden Criticised

25/04/2019

Barristers involved: James Arney QC
The Claimant claimed a total award of £594,498. The Defendant contended that an award of £136,815 was appropriate in its counter-schedule, however a higher figure of £206,640 was conceded in final submissions. Substantial issues remained in dispute, particularly future care and assistance including lifelong equine care.

On 8 May 2014, the Claimant was driving towards Sleaford behind a lorry at 50mph. The Defendant's insured was driving in the opposite direction when his vehicle came onto the wrong side of the road and collided with the lorry. In the process, the front offside wheel of the Defendant's insured car was ripped off. The vehicle pivoted and turned sharply across the rear of the lorry and directly into the path of the Claimant's vehicle. The Defendant's insured died in the collision.

The principal areas of dispute between the parties included: general damages, the claim for future medication and treatment, and most significantly the claim for future equine and domestic assistance.

Expert evidence was heard from each of the three separate disciplines as to whether the Claimant has suffered a traumatic brain injury:

Consultant neurologists (Dr Allder for the Claimant, Professor Wills for the Defendant);

Neuropsychologists (Dr Griffiths for the Claimant, Dr Vessey for the Defendant); and

Consultant psychiatrists (Dr Latif for the Claimant, Dr Holden for the Defendant).

HHJ Hedley held that whilst each of the other 5 experts who gave oral evidence were impressive and quick to acknowledge alternative points of view and make appropriate concessions to them, Dr Holden was at times particularly defensive. In his judgement, Dr Holden did not approach this case with an open mind. On the contrary he was quite prepared to make unconsidered assertions if they would support his view. HHJ Hedley preferred the Claimant's evidence of Dr Latif. Although the end of the litigation would undoubtedly be a relief to the Claimant, Dr Holden's assertion that it would have a significant impact on her symptomology was not accepted.

HHJ Hedley held that the Claimant did indeed suffer a mild traumatic brain injury (despite no recorded lowered GCS reading and no evidence of brain injury on imaging) on the basis that: the collision impact was at speed and was heavy; the Claimant does not have clear recollection of events and there was no recorded GCS score taken in the immediate aftermath of the accident. If, as Dr Holden suggested, the Claimant has substantially recovered from PTSD and her adjustment disorder, it would leave the continuing cognitive symptoms largely unexplained. It was clear that despite a substantial treatment regime, which had produced psychological improvement, the Claimant's cognitive symptoms are largely continuing; pointing towards a brain injury. PSLA was awarded at £70,000, taking into account the Claimant's severe ankle injury and the mild traumatic brain injury. The figure included a modest amount to reflect the Claimant's continuing risk of epilepsy over the month following trial.

The judge held that the accident was the reason for the Claimant's redundancy.

Following the accident, the Claimant struggled with the daily care of her horses, as well as heavier domestic tasks. The Claimant required assistance that her adult children were no longer able to provide, and so her former husband moved back into the property to support her. In assessing damages for future care and assistance, HHJ Hedley considered that the Claimant has always had a passion for horses and stated in evidence that she could not manage without horses in her life. The reason why her former husband moved back in was to provide help and he would not have done so if the Claimant did not need help. Although, as the Defendant contended, the Claimant's involvement with horses is a lifestyle choice, it is a choice which she made before the accident when she was able to pursue it. But for the accident, she would not have needed family assistance. Hedley J. held that given that the object of compensatory damage is to put the Claimant into a position she would have been in but for the accident, she should be enabled to continue to pursue her major life hobby and interest. It would be unreasonable to expect the Claimant to give up her horses.

Judgement was awarded for the Claimant in the sum of £480,731.72, beating the Claimant's own Part 36 offer. The Defendant incurred Part 36 penalties in respect of damages, interest and costs.

The final amount awarded was £536,628.10.

£1.4M Independent Evaluation Settlement for Moderate-Severe Traumatic Brain Injury

15/04/2019

Barristers involved: James Arney QC

The Claimant suffered a traumatic brain injury in a road traffic accident at the age of 19. Liability had been apportioned 90/10 in the Claimant's favour.

The Claimant had a complex pre-accident history, most notably by reference to her autism, but also as to low mood, self-harming, dyslexia, social communication disorder, disorganisation, impulsiveness, obsessiveness and hallucinations. The combined effect of these issues was sufficient to impact on the Claimant's pre-accident development, most notably in respect of her education, but also in terms of early employment. The Claimant's school records revealed consistently poor organisation, lack of commitment, failure to meet deadlines and/or complete assignments and non-attendance.

Parties were at a disagreement on the ongoing need for support worker and case management input, and the extent to which the Claimant would have required these in any event. Similarly, the Claimant's long-term loss of earnings were disputed on the basis of her pre-accident difficulties.

After a failed JSM, with the parties' pleaded cases being over £5M apart, both sides agreed to engage in an Independent Evaluation undertaken by Andrew Lewis QC. After evaluation, parties reached settlement at £1,411,000 plus provisional damages on the risk of uncontrolled epilepsy.

Settlement was influenced by the Defendant's experts' acceptance that: –

a) The Claimant would have been independent but for the accident notwithstanding pre-existing issues; and

b) The principle that post accident, the Claimant needed long-term commercial third-party input.

Speeding vs Unsafe Turning: Which Is More Negligent? 50-50 apportionment says the High Court

25/03/2019

Barristers involved: James Arney QC
The Claimant had pushed in a line of parked cars, near a junction, opposite the corner of the school playground. As the Defendant approached from the opposite direction, the Claimant began, from a stationary position, a manoeuvre which involved crossing the Defendant's path. As she pulled across his path, the Defendant's car struck the passenger side of the Claimant's car, shunting it into the corner of the primary school walls. The Claimant suffered allegedly serious injuries, including it is said life-changing brain damage.

The Defendant's speed was acknowledged by the Defendant to attract liability, but it was argued that the main cause of the accident was the Claimant's unpredictable manoeuvre across the path of the oncoming traffic. The Claimant denied all culpability. The Court held that although the Defendant was travelling at excessive speed, the Claimant, who had a long, clear line of sight, could not have safely completed the manoeuvre she had started. She had driven unsafely and was a cause of the collision.

Collins Rice J. was clear that there must be a measure of responsibility on both drivers for this accident. Adopting the approach approved by the Supreme Court in Jackson v Murray [2015] UKSC 5, 'causative potency' and 'blameworthiness' of each driver's conduct must be considered in the just and equitable apportionment of liability. The exercise is highly fact sensitive and evaluative, but guided by principles in authorities.

Notwithstanding the location of the school and the time of day, it was held not to be unreasonable to travel at the 30mph limit rather than at a lower speed. There is no obvious reason to think that a competent and alert driver would not have been safe driving close to or at the speed limit.

Whilst the Defendant's driving was excessive, the nature of and level of the speeding made it misjudged rather than reckless and flagrant. The Claimant instead of waiting, pulled out, across the Defendant's right of way, in circumstances where he could not avoid hitting her. Each created a considerable hazard for the other. The Claimant's decision to begin turning when the Defendant was already visibly going too fast to accommodate her manoeuvre may have been the more proximate cause. The Defendant's conduct in driving above the speed limit may have been the more blameworthy. But in the end, it was the combination of the Defendant's unsafe speed and the Claimant's unsafe timing which set in motion an accident neither of them could then avoid.

The court held that a just and equitable apportionment of liability, in circumstances where each party had created a considerable hazard for the other, was 50% in respect of each party. Judgement reflected the Defendant's successful Part 36 offer of 50-50 liability.

The case also resolved an issue of fact on seatbelt usage.

Please see below for link to Judgment.

You can view the publication at https://www.bailii.org/ew/cases/EWHC/QB/2019/644.html

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When It Is Reasonable To Run Someone Over…

28/01/2019

Barristers involved: James Arney QC
The Defendant was one of a group of young people who travelled to McDonald's in two cars. The Defendant, driving a Volkswagen Polo, was carrying two female passengers, while the other, a Ford Fiesta, contained two males and one female passenger. An altercation ensued inside the McDonald's between the Defendant's group and a large group of young Asian males. The Defendant's group returned to their respective vehicles, followed outside by a number of Asian males.

The Claimant and his friend (two older Asian males) were parked in the bay next to the Fiesta. One of the passengers in the Fiesta made a loud racially provocative comment upon returning to their vehicle, causing some of the group of Asian males to run towards the parked vehicles. The Claimant's friend reacted to the abuse by getting out of his car and remonstrating with the driver of the Fiesta, shouting and swearing at the driver to get out of his vehicle. One of the group managed to pull open the front passenger door of the Fiesta, while others kicked and hit the vehicle as it was reversing out of the parking bay before driving forwards and away from the scene.

The Claimant's friend then turned his attention to the Polo to remonstrate with the Defendant, shouting and swearing at him to get out of his vehicle and fight. Despite the Defendant trying to reason with him, the Claimant's friend got as far as opening the driver's door and grabbing the Defendant's arm in order to drag him out, while the group of Asian males surrounded the vehicle. The Claimant had exited his vehicle to calm down his friend, and was by now positioned in front of the Defendant's car. Fearing for his safety and that of his female passengers, hoping and expecting that the Claimant would move out the way, the Defendant floored his accelerator to escape the attacking group.

Mr Justice Turner held the Claimant's friend to be an unreliable witness, who was argumentative under cross examination and prone to volatility when challenged.

The Claimant's Counsel attempted, after the conclusion of evidence, to render the evidence in the police records inadmissible, despite them forming part of the agreed Trial Bundle. The Claimant had overlooked Charnock v Rowan [2012] EWCA Civ 2 and PD 32, 27.2. The Court held that the evidence was admissible, their status as hearsay going to weight rather than admissibility.

Mr Justice Turner held that the Defendant was in genuine fear for his safety and that of his two female passengers. These were not circumstances in which the reasonable man could be expected to weight to a nicety the relative risks involved in choosing between the options open to him. The fact that he accelerated away at speed was reasonable and understandable in these particular circumstances. The Defendant acted in a way which did not fall below the standard of a reasonable driver placed in the threatening and rapidly developing situation in which he found himself.

Please click here to view Judgment.

£4.1 Million judgement for below-the-knee amputation Claimant

20/09/2018

Barristers involved: James Arney QC
Liability was admitted and the action for personal injury and consequential financial losses was a quantum issue only. William Audland QC, 12 King's Bench Walk, appeared on behalf of the Defendant.

The Claimant was awarded costs for 5 different prosthetics including: a primary microprocessor limb, an alternate everyday limb with cosmesis, a water activity limb, a running blade and ski limb.

The Claimant was also awarded sports massage therapy (claimed at £72,626) for life, in addition to physiotherapy and other treatments.

It was accepted that it was reasonable to award additional costs of flight upgrades for the Claimant and her family (based on one long haul and two short haul flights per year). The Claimant's submission was accepted that the Claimant would in her uninjured state have travelled with her husband and children and it is reasonable to permit her to do the same in her injured condition. Costs included the additional costs of the children's upgrade to their age of 18, including costs for a child not yet conceived (£243,877 awarded).

This case marked only the second reported occasion on which the Court has been asked to consider accommodation claims in the context of negative discount rates.

Both parties accepted that the Claimant would need to move home because of her injuries, but damages in respect of the additional capital cost of the purchase were disputed. Given the current negative discount rate to be applied for the purposes of calculating multipliers for future losses, the Claimant would, adopting the Roberts v Johnstone formulation, recover a nil award in respect of the £900,000 additional capital costs of special accommodation.

The Claimant presented several alternatives, included both lump sum and PPO-based options. Mrs Justice Lambert held that she was bound by Roberts v Johnstone and had no choice but to make a nil award.

Permission to appeal was granted on this specific issue (appeal papers have since been lodged).

You can view the publication at http://www.bailii.org/ew/cases/EWHC/QB/2018/2060.html

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TGC Costs Newsletter

17/05/2018

Barristers involved: Paul McGrath Richard Boyle James Arney QC James Laughland Sian Reeves Matthew Waszak Lionel Stride Ellen Robertson
Please see link below to the latest TGC Costs Newsletter.

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

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Claimant admits fundamental dishonesty at the commencement of trial

07/02/2018

Barristers involved: James Arney QC
Miss Stephani had put forward a claim which was discovered to be dishonest in relation to causation, the extent of functional recovery and loss/expenses claimed. The claim was settled at trial by the Claimant making a £20,000 contribution to the Defendant's costs, and her accepting a finding of fundamental dishonesty for the purpose of rendering those costs enforceable pursuant to CPR 44.16(1).

James Arney, instructed by DWF, represented John Lewis Partnership PLC, against whom a claim for damages had been pursued by the Claimant, Miss Nicola Stephani.

Miss Stephani's claim was that she sustained an ankle injury due to a flooring defect in a John Lewis branch in May 2013, and had significant symptoms until at least April 2016, and on this basis she claimed significant damages.

The injury, she alleged, prevented her from pursuing a range of pre-accident activities such as running and exercise classes at the gym. She claimed she could run for no more than 30-60 seconds. Her ParkRun records, gym attendance records, and frequent and detailed commentary regarding her exercise endeavours on Facebook were found to be inconsistent with her claims. Miss Stephani was also dishonest in a number of less central aspects of her claim. Examples included producing a receipt for dog sitting expenses allegedly incurred on a date when surveillance footage showed her walking it.

Miss Stephani compounded her deceit when, on the same day as signing inaccurate Part 18 Replies, she attempted to cover up online records of her ParkRun activities.

Mr Arney produced an amended defence for John Lewis, pleading Fundamental Dishonesty and the disapplication of QOCS. Shortly after receipt of the amended defence, Miss Stephani's solicitors withdrew and she proceeded to represent herself.

Protracted negotiations followed as the trial date approached, culminating in a settlement which required Miss Stephani to pay a £20,000 contribution towards John Lewis' costs, and to accept her dishonesty so that these costs were enforceable for QOCS purposes.

Appearing before the trial judge, His Honour Judge Hughes QC, to ratify the agreement, the judge made clear that Miss Stephani was free to choose between the compromise offered, and proceeding with a contested trial.

He also made clear that from his consideration of the papers, John Lewis appeared to have shown that Miss Stephani had been thoroughly dishonest, and was at risk of the case papers being referred for potential committal proceedings in the event that specific findings were made.

In the context of whether the Claimant might be inclined to go to the press, HHJ Hughes QC stressed that the Court papers, including Mr Arney's skeleton were matters of public record.

Co-director of flooring company recovers in excess of £100k for silicone sleeves and business class flights following collision with uninsured driver

17/10/2017

Barristers involved: James Arney QC
The defendant was being chased by the police and collided with the claimant's motorcycle which caught fire. As a result the claimant sustained a severe degloving injury to his left calf and enduring knee symptoms, as well as wrist, thumb and psychiatric injuries. The claimant's case was that his disfiguring calf injuries, and the recommendation not to expose the scarring to sunlight, warranted the provision of high definition silicone sleeves with gel inserts, to obscure and protect the scarring. Further, it was the claimant's habit to take two foreign holidays each year, but the pain and discomfort in his knee would render it necessary for him to have more leg room during air travel. He consequently claimed for the additional cost of business class flights.

By virtue of the Motor Insurers' Bureau (Compensation of Victims of Uninsured Drivers) Agreement 1999, the MIB acted in place of the defendant. The MIB contended that the silicone sleeves constituted a disproportionate expense in light of the anticipated extent of use. It was further asserted that additional space seating could be obtained in economy class, provided bookings were made sufficiently far in advance.

Negotiations reached settlement in excess of £50,000 in relation to each of these heads of loss.

Telematics resolves Liability Issue

15/08/2017

Barristers involved: James Arney QC
James acted on behalf of the first defendant who following a collision with the second defendant at a junction, lost control of her vehicle and collided with the claimant. The second defendant, though admitting to some negligence, claimed that they had been stationary prior to the collision with the first defendant. This issue was crucial to the first defendant's liability position.

Telematics evidence strongly indicated that the second defendant's vehicle had in fact been travelling forward pre-impact. Against this evidence, the second defendant conceded liability and James' client was absolved from allegations of negligence in the case.

Surveillance Evidence – delayed application did not constitute an ambush

17/03/2017
Barristers involved: James Arney QC

Hicks v Rostas Lawtel

Settlement based on New Discount Rate

07/03/2017

Barristers involved: James Arney QC
Instructed by Irwin Mitchell, James Arney secured a £650,000 settlement on behalf of a 55 year-old care worker who sustained severe leg and ankle injuries in an RTA. The claim was originally pleaded at about £737,000, but increased to just over £900,000 following the discount rate change to -0.75%. Settlement negotiations proceeded expressly on the basis that the new discount rate be used without adjustment.

Knauer v The Ministry of Justice – settlement of the costs dispute.

13/12/2016

Barristers involved: James Arney QC
A costs dispute arose following the conclusion of Knauer v The Ministry of Justice, the long-awaited case which provided the Supreme Court with an opportunity to correct Cookson v Knowles as to multipliers in fatal accident claims. Contested costs matters included the appellant's entitlement to recover success fees at 100% notwithstanding the agreement between the parties that no trial costs would be recoverable, as well as a number of line by line issues. Instructed by Charles Lucas & Marshall, James Arney negotiated a satisfactory settlement on behalf of the appellant, consistent with the 100% uplift being recovered.
