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James Laughland

Year of Call: 1991

Practice Areas

- Civil Fraud
- Clinical Negligence
- Costs
- Personal Injury
- Professional Liability

Public Access

Undertakes Public Access work

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Awards

Experience

James' practice is predominantly concerned with personal injury litigation, motor fraud and costs. He is recognised by the leading legal directories as a leader in each of these fields.

Respected by both those acting for Claimants and for insurers, he receives instructions regularly from many leading firms.

James also has experience of all aspects of costs and regularly represents a leading legal expenses insurer on matters concerning their ATE products.

James strives to provide pragmatic and prompt advice, whilst recognising that if contested litigation is unavoidable then good preparation is key. Having been in practice now for almost 30 years there is little left to surprise him and being calm under pressure is but one of the attributes noted in the comments made by the leading Directories.

James is used to dealing with all aspects of personal injury litigation, including fatal accident claims. He is keen to ensure that the client, whether a lay client or insurer, understands their options and is properly informed and advised as to the best route forward. Whether the case settles at a round-table meeting or is fought through to trial, James will act as a forceful advocate for those who instruct him. James is trained to act as an arbitrator for personal injury cases run through the P1cARBS Scheme.

James' knowledge of costs law also assists in ensuring that the



pragmatic and commercial realities of litigation are addressed throughout. His experience of detailed assessments, and thus the careful consideration of how solicitors' work, ensures that he understands the importance of a collaborative and proactive approach to working with solicitors to ensure the best outcome for their client. James is a member of CADR (the Costs ADR service) and is able to offer expert evaluation and early neutral evaluation.

Arbitrator

Trained as a PlcARBS Arbitrator.

Directories

"He's totally dependable and you can rely implicitly on the advice he gives." *Chambers & Partners 2022 (Costs)*

"A robust advocate who is sensible with the points he takes." *Chambers & Partners 2022 (Motor Insurance Fraud)*

"He is very measured, good on costs, sees the bigger picture and is a very skilled negotiator." *Chambers & Partners 2022 (Personal Injury)*

"Second to none on the subject of legal costs, he has a huge depth of knowledge." *Legal 500 2022*

"An excellent advocate. He is very knowledgeable." *Chambers & Partners 2021 (Personal Injury)*

"Costs-related matters are his speciality, and he delivers excellent, clear answers to complicated questions." *Chambers & Partners 2021 (Costs)*

"He's meticulous in preparation and very well suited to this type of work. He's also great to work with and clients really like him." *Chambers & Partners 2021 (Motor Fraud)*

'A gifted advocate who provides very well prepared and polished advice in a down to earth and thoughtful way.' *Legal 500 2020 (Insurance Fraud - Tier 1)*

'Depth of knowledge and experience with a commercial approach to problem solving.' *Legal 500 2020 (Costs - Tier 1)*

'Helpful, approachable, knowledgeable and unflappable.' *Legal 500 2019 (Costs)*

'Strong all-rounder who gives pragmatic advice and is very approachable.' *Legal 500 2019 (Personal Injury)*

'Robust in cross-examination, excellent drafting and analytical skills which is key in the insurance fraud field.' *Legal 500,2019 (Insurance Fraud)*

"A tough negotiator, who is compassionate and caring with clients." *Legal 500 2017 (Personal Injury)*

"A sound advocate with unsurpassed legal knowledge" *Legal 500 2017 (Costs)*

"A leading costs junior who knows the law on ATE and success fees like the back of his hand." *Chambers & Partners 2017 (Costs)*

"He's a great all-rounder who is quick at turning papers around. You know he'll fully consider them and look at every bit of detail. His advocacy is great as well." *Chambers & Partners 2017 (Motor Fraud)*

"He tailors his advice to the client. A very good advocate, very well prepared and very good tactically." *Chambers & Partners 2017 (Personal Injury)*

"He provides strong technical knowledge and pragmatic advice." *Legal 500 2016 (Costs)*

"He is a tough negotiator and an impressive advocate." *Legal 500 2016 (Personal Injury)*

"He's masterful as an advocate and his paperwork is supreme." *Chambers & Partners 2016 (Costs)*

"He is always fully prepared, has excellent attention to detail and is very client-focused. He is a pleasure to work with." *Chambers & Partners 2016 (Personal Injury)*

"He is a great advocate who is masterful in cross-examination and completely at ease when thrown curve balls." *Legal 500, 2015 (Personal Injury)*

"He has great ability to know which cases are sensibly viable." *Legal 500, 2015 (Costs)*

"He has a great ability to think on his feet." *Chambers & Partners 2015 (Costs)*

“Robust, clear and organised, he takes a very thorough approach to cases.” *Chambers & Partners 2015 (Motor Insurance Fraud)*

“He is excellent – he takes a lot of time when preparing, is knowledgeable and gets on well with clients. He is very reliable.” *Chambers & Partners 2015 (Personal Injury)*

“A standout barrister at the cutting edge of costs law, with great advocacy skills.” *Legal 500, 2014 (Costs)*

“Equally impressive in court and in settlement discussions.” *Legal 500, 2014 (Personal Injury)*

“He has both great technical knowledge and a pragmatic mindset, making him highly attractive to those that instruct him”. ... “He’s very robust and confident in his opinions. From our point of view, time is very often of the essence, and he’s quick at dealing with issues.” *Chambers & Partners 2014 (Costs)*

“He’s very effective at cross-examining and has the ability to take a witness apart.” “He gives clear, robust advice, his conferences are well-structured and clients find him easy to follow. He’s also a pretty tough negotiator.” *Chambers & Partners 2014 (Personal Injury)*

“very well prepared, and clever in the way that he approaches the issue” *Legal 500, 2013 (Costs)*

“James Laughland impresses with his “bullish approach” and “quick turnaround times.” Deemed to be “pure class due to his provision of pragmatic, sensible and punchy advice,” he is more than a match for anyone of his call.” *Chambers & Partners 2012 (Personal Injury)*

“a pragmatic adviser with notable interpersonal skills.” *Chambers & Partners 2012 (Costs)*

The ‘impressive’ James Laughland is ‘technically very strong in relation to costs law practice, and is a first-class advocate with good judgement and very good on the detail’ *Legal 500, 2011 (Costs)*

“a class act” *Legal 500, 2011 (Personal Injury)*

“a very skilled and measured advocate” *Chambers & Partners 2011 (Personal Injury)*

“a tough negotiator...robust and meticulous” *Chambers & Partners 2011 (Costs)*

“a highly efficient and self-assured barrister” *Chambers & Partners 2010 (Personal Injury)*

A “great lawyer” *Legal 500, 2010*

“Incisive but laid back, he is an absolutely first-class advocate” *Chambers & Partners 2009 (Costs)*

Education

University of Kent, BA (Hons) Law

Memberships

- Personal Injury Bar Association (PIBA)
- Collective Redress Lawyers Association (CORLA)

Cases

LOCOG v Sinfield

[2018] EWHC 51 (QB)

22.01.2018

Barristers involved: James Laughland Mark James

First High Court decision addressing issues concerning “fundamental dishonesty” within the scope of section 57 Criminal Justice & Courts Act 2015.

The Claimant’s dishonesty related to his claim for commercial gardening assistance. He had claimed that he only employed a gardener as a consequence of the accident, whereas in fact he had done so for many years. In addition, his Disclosure List included invoices from the gardener, but in fact these were documents created by the Claimant himself.

The trial judge had found dishonesty but held that it was not “fundamental dishonesty”. That decision was overturned on appeal. As a result of the finding of fundamental dishonesty the claim, valued at some £26,000, was struck out and the Claimant ordered to pay the Defendant’s costs of the action and appeal on the indemnity basis.

Liverpool Victoria Insurance v Yavuz & oths [2017]

EWHC 3099 (QB)

[2017]

Barristers involved: James Laughland

Appeared for the successful insurer in a 5-day contempt of court application against 9 Defendants. It was alleged that each had made false statements of truth in County Court personal injury claims in relation to 3 road traffic accidents that had not, in truth, ever occurred or not as described. The Judge was satisfied beyond reasonable doubt that the allegations were proved and imposed prison sentences ranging from 16 months to 4 months, suspended, on all the Defendants.

BNM -v- MGN Judgment, Court of Appeal Success for Claimant on the New Test of Proportionality

7th November 2017

Barristers involved: Simon Browne QC James Laughland

Instructed by Atkins Thomson, Simon Browne QC, leading James Laughland, succeeded in persuading the Court of Appeal (the Master of the Rolls, with Longmore LJ and Irwin LJ) that the Senior Costs Judge was wrong to hold that the new test of proportionality applies to still recoverable additional liabilities. The Court of Appeal has unanimously held that the saving and transitional provisions in CPR 48, combined with the more limited definition of “costs” applicable since 1 April 2013 (that now omits any reference to “additional liabilities”), together operated to preserve the former Costs Rules, with their attendant Practice Directions, to the assessment of costs that include additional liabilities.

Miller v Associated Newspapers [2017]

UKSC 33

[2017]

Barristers involved: James Laughland

Supreme Court. Newspapers’ Article 10 challenge to the payment of Additional Liabilities. James Laughland appeared as Junior Counsel for one of three Respondents in a combined leap-frog appeal brought by three newspapers (The Times, Daily Mail & Mirror) against their liability to pay success fees and after the event insurance premiums to successful litigants in publication cases.

The newspapers argued over the three days hearing that the payment of such additional liabilities amounts to a breach of their Article 10 right to freedom of expression under the Human Rights Act.

Broadhurst v Tan [2016] EWCA Civ 94

30/01/2017

Barristers involved: James Laughland

Appeared for the Defendants in this expedited appeal heard before the Master of the Rolls and others concerning the issue of whether In fixed costs personal injury claims governed by CPR Pt 45 s.IIIA, costs were payable on the indemnity basis under CPR r.36.14 where a claimant made a Part 36 offer and then obtained judgment which was more advantageous than the offer.

The Court concluded that since r.36.14(3) had not been modified by r.36.14A, it continued to have full force and effect. Fixed costs were not to be equated with indemnity costs and any tension between r.45.29B and r.36.14A therefore had to be resolved in favour of r.36.14A. Put simply, conventional costs – not fixed costs – would be recovered when costs were payable on the indemnity basis.

Da Costa & anr v Sargaco & anr

[2016] EWCA Civ 764

14.07.2016

Barristers involved: James Laughland

James Laughland, acted for the Defendant insurer on appeal where the issue for determination was whether a Judge had been right to exclude a Claimant, against his will, from court whilst another gave his evidence. Fraud had been alleged and the trial judge agreed to the Defendant’s request that one Claimant be kept out of court whilst the other was cross-examined.

The Court of Appeal held that the starting point if the issue arose was that a party is entitled to be present throughout the hearing of a civil trial. The Judge’s decision in this case was wrong as she had failed to base her consideration upon that starting point, if at all. However, when considered as a whole the Court was not satisfied that the exclusion of one Claimant had rendered the trial for both unfair and therefore dismissed the appeal. A separate issue was whether the Judge had been correct to make a finding of fraud in this case. The Court found for the Claimants on this. However, the Judge’s decision that nonetheless the Claimants had failed to prove their case was maintained so the appeal was dismissed.

Nokes v Heart of England NHS Foundation Trust

[2015] EWHC B6 (Costs)

29/05/2015

Barristers involved: James Laughland

A claimant in clinical negligence proceedings was able to recover in full by way of costs the premium she paid for an after-the-event insurance policy. This was the first SCCO case to consider the reasonableness of a post-LASPO clinical negligence ATE premium.

The Azimi Group Litigation - (Fraud)

Lawtel - 8 WLUK 243 - HHJ Mitchell

13/02/2014

Barristers involved: Marcus Grant James Laughland Charles Curtis

Orchestrated slam-on staged accidents "swindle" exposed.

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

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

National Crime Agency v Namli & Topinvest Holding International Ltd

[2013] EWCA

17/12/2013

Barristers involved: James Laughland

Damning findings made against the First Defendant by the Judge below when making a civil recovery order against him and his company justified requiring him to give security for the costs incurred by the NCA in opposing their appeal against the order and for the costs of the proceedings below.

The Azimi Group of Cases

21/08/2013

Barristers involved: James Laughland

Acted for the Defendants in some of the 8 cases heard consecutively before HHJ John Mitchell at the County Court at Central London in which he concluded, based upon reliance on similar fact evidence, that all the cases were deliberate slam-on collisions and dismissed all the claims.

Heron v TNT & Mackrell Turner Garrett

[2014] 1 WLR 1277; [2013] 4 Costs L.R. 551

02/05/2013

Barristers involved: James Laughland

Consideration by the Court of Appeal of whether a judge had been right to refuse an employer's application for a non-party costs

order against its employee's solicitors, instructed on a CFA, in personal injury claim he had brought against them. The employers had not shown that in failing to obtain ATE insurance for the employee the solicitors had become a "real party" to the litigation.

Monk v Cann Hall Primary School and Essex County Council

[2013] EWCA Civ 826

July 2013

Barristers involved: Keith Morton QC James Laughland

Court of Appeal decision on relationship between damages for unfair dismissal and common law damages for negligence causing person injury in the context of a dismissal. The Court of Appeal held that the Judge had been wrong to strike out the claimant's case

Seaga v Harper (No. 2)

[2009] UKPC 26

29/06/2009

Barristers involved: James Laughland

Consideration by the Privy Council of whether litigation could be funded by way of a CFA with recoverable success fee and ATE for litigation undertaken before that Court in the UK, but emanating from a Commonwealth jurisdiction where CFAs were not available.

Oriakhel v Vickers & Groupama Insurance Co Ltd & others

[2008] EWCA Civ 748

04/07/2008

Barristers involved: James Laughland

Consideration by the Court of Appeal of the circumstances in which it would be right to make a non-party costs order against a witness alleged to be a party to a conspiracy to bring a dishonest insurance claim.

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>

TGC Fraud Update Issue XII

01/06/2021

Authors: James Henry Simon Browne QC Tim Sharpe James Laughland Anthony Johnson George Davies Lionel Stride Robert Riddell Paul McGrath Edward Hutchin Ellen Robertson

Please see link below to the latest TGC Fraud newsletter.

You can view the publication at

https://tgchambers.com/wp-content/uploads/2021/05/TGC070_Newsletter_Fraud_issue_12_v1-002-1.pdf

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

TGC Costs Update - Vol 7 December 2020

17/12/2020

Authors: Matthew Waszak Richard Boyle Simon Browne QC Richard Wilkinson James Laughland Sian Reeves Anthony Johnson Lionel Stride Robert Riddell Ellen Robertson James Yapp Paul Erdunast

Please see link below to the latest TGC Costs newsletter.

You can view the publication at https://tgchambers.com/wp-content/uploads/2020/12/TGC064_Costs_Newsletter_Vol_VII_v2.pdf

TGC Costs Newsletter Vol VI

15/07/2020

Authors: Simon Browne QC James Laughland Mark James Richard Wilkinson Anthony Johnson Sian Reeves Richard Boyle Matthew Waszak Ellen Robertson James Yapp Robert Riddell Harriet Wakeman Olivia Rosenstrom

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

You can view the publication at http://tgchambers.com/wp-content/uploads/2020/07/TGC061_Costs_Newsletter_Vol_VI_v3.pdf

Webinar : Ask the TGC Costs Barristers!

21/05/2020

Authors: Simon Browne QC James Laughland Richard Wilkinson Matthew Waszak

Access to the Cloud recording of 21 May 2020 Webinar **Ask the TGC Costs Barristers!** hosted by Simon Browne QC, James Laughland, Richard Wilkinson and Matthew Waszak can be seen below. Please use the following password: 0l=4?.6W

You can view the publication at

https://tgchambers.zoom.us/rec/share/2colFJrir3hLW4nCx13tB_IAA6jCea8hnAa8_dbnhkJOWCCGoL73quF1DBR1Xex

TGC Costs Newsletter Vol V

10/12/2019

Authors: Simon Browne QC James Laughland 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>

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>

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>

TGC Fraud Newsletter Issue VII - February 2018

21/02/2018

Authors: James Laughland James Henry Marcus Grant Tim Sharpe Ellen Robertson George Davies

Please see link below for Issue 7 of TGC Fraud Update, a publication we have set up with the stated aim of facilitating the sharing of information about decided claims involving issues of road traffic fraud and related matters.

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

Cook on Costs: Jackson Review Supplement

31/07/2013

Authors: James Laughland Joanna Hughes

With Joanna Hughes, wrote the chapters on Conditional Fee Agreements, After The Event Insurance and Damages Based Agreements for Cook on Costs' "Jackson Review Supplement".

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 Adekun* [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>

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>

TGC Fraud Update - Issue XII June 2021

01/06/2021

Barristers involved: James Henry Simon Browne QC Tim Sharpe James Laughland Anthony Johnson George Davies Lionel Stride Robert Riddell Paul McGrath Edward Hutchin Ellen Robertson

Also in this issue:

- Simon Browne QC and Anthony Johnson report on the latest (and final) instalment in the Seabrook trilogy. A victory in the Court of Appeal and clarification on Part 36 Offers.
- Tim Sharpe tells the tale of how Celebrity Big Brother winner Alex Reid was committed to prison for contempt of court.
- Anthony Johnson takes the sting out of the tail of the High Court decision in *Brint v Barking* [2021] EWHC 290 (QB).
- Lionel Stride analyses the proper approach to the particularisation of deceit claims following *Kasem v UCLH* [2021] EWHC 136 (QB).
- James Laughland treats us to the most boring pub quiz question of all time, and then seeks to regain our interest with the tale of a £4M claim gone wrong, for all the right reasons.
- I look at the admissibility of ANPR evidence in light of the latest County Court guidance from HHJ Cotter QC in *Harrison v Buncher*.
- George Davies explores what can happen when the boot is on the other foot: dishonesty of the defendant and indemnity / 'exceptional circumstances' costs.

As always, these articles are accompanied by summaries and interesting practice points taken from a host of recent decisions in the types of cases that we all deal with on a daily basis.

Please do contact a member of the TGC fraud team if you have any queries about any of the items dealt with in this issue, or indeed about any other issues relating to insurance fraud and related matters.

I hope that the contents of this newsletter are both interesting and useful; as ever I would welcome any feedback from our readers.

James Henry

Editor

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

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

TGC Costs Update - Vol 7 December 2020

15/12/2020

Barristers involved: Matthew Waszak Richard Boyle Simon Browne QC Richard Wilkinson James Laughland Sian Reeves Anthony Johnson Lionel Stride Robert Riddell Ellen Robertson Paul Erdunast James Yapp

We hope you find this an interesting and helpful read.

If you would like to be added to the mailing list please email events@tgchambers.com

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

TGC Costs Newsletter

15/07/2020

Barristers involved: Simon Browne QC James Laughland Mark James Richard Wilkinson Anthony Johnson Sian Reeves Richard Boyle Matthew Waszak Ellen Robertson James Yapp Robert Riddell Harriet Wakeman Olivia Rosenstrom

Please see link below to the 6th edition of the the TGC Costs Newsletter.

You can view the publication at http://tgchambers.com/wp-content/uploads/2020/07/TGC061_Costs_Newsletter_Vol_VI_v3.pdf

TGC Costs Newsletter

10/12/2019

Barristers involved: Simon Browne QC James Laughland 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>

James Laughland secures award worth £6.5m in MIB claim

29/05/2019

Barristers involved: James Laughland

The Applicant, riding a motorcycle in 2008, was struck with such force by a van that he suffered immediate traumatic amputation of his leg. The van driver did not stop and a claim was made to the MIB under the 2003 Untraced Driver's Agreement. Dissatisfied with parts of the MIB's initial award, a further application was then made for an arbitrator's determination. The Applicant was in the early years of what was contended would have been a long and successful career as a trader in the City. His current but-for earnings were eventually assessed to be some £295,000 pa gross and that he would have continued with such earnings to age 50, with half thereafter to age 65. Residual earning capacity was around £50,000 pa. A life-time award of £25,800 pa was also made for prosthetics. A lump-sum award of £2.85m, including general damages for pain, suffering & loss of amenity of £140,000 was made, with the balance to be paid by way of periodical payments making the overall award have a potential value of £6.5m on a full-life basis.

Welcome to the new Electronic Bill of Costs

12/03/2019

Barristers involved: James Laughland Matthew Waszak

Please come and say hello. Details of the event can be found at the link below.

You can view the publication at <https://www.liverpoollawsociety.org.uk/training-courses/civil-litigation/2019-costs-conference/>

Breakfast Costs Conference

22/02/2019

Barristers involved: Simon Browne QC James Laughland Joanna Hughes Juliet Wells

Please see [here](#) for further details and booking information.

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>

Commercial Litigation Funding & Costs Breakfast

26/03/2018

Barristers involved: James Laughland

See link for further details and booking information.

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

Husband and wife guilty of Contempt of Court

28/02/2018

Barristers involved: James Laughland

They belatedly admitted contempt of court by the making of false Statements of Truth in relation to a County Court claim arising out of a deliberately induced road traffic accident and by making subsequent fraudulent claims for damages for personal injury and credit hire charges.

Mr Justice Julian Knowles imposed sentences of 12 months and 9 months respectively on them. Mrs Kapoor's sentence was suspended for 12 months. They were also ordered to pay costs of some £40,000.

They had originally brought a County Court claim for whiplash and credit hire charges relating to an accident that occurred in July 2013. By the time of trial the credit hire charges claimed were in excess of £175,000. The claim was successfully defended in the Mayor's & City of London Court in June 2016 on the basis that the collision had been deliberately induced in a slam-on / induced style accident. The Defendant's driver felt he had been the victim of "a scam" from the outset and gave evidence both in the County Court and High Court.

After dismissal of the County Court claim DAC Beachcroft's client gave instructions for the matter to be pursued further, through an application for the Kapoors' committal for contempt of court.

In their initial defence of the allegations of contempt, Mr and Mrs Kapoor sought to blame the credit hire company and their former solicitors, claiming that they had simply signed various documents verified by Statements of Truth without reading any of them and

without being aware of their contents. James Laughland argued that this explanation – even if true, which was disputed – could not exonerate them from the charge of acting in contempt of court. By signing a Statement of Truth they were required to have an honest belief in the contents of the facts stated therein. Wilful ignorance of the contents was not acceptable.

In the event, two days before the final hearing, both Mr and Mrs Kapoor admitted that the collision had been deliberately induced and that all claims arising therefore from were fraudulent.

TGC Fraud Update Issue VII - February 2018

21/02/2018

Barristers involved: James Laughland James Henry Marcus Grant Tim Sharpe Ellen Robertson George Davies
Please see link below for Issue VII of the TGC Fraud newsletter.

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

HIGH COURT JUDGE RULES ON SECTION 57 FUNDAMENTAL DISHONESTY

22/01/2018

Barristers involved: Mark James James Laughland

Mr Justice Julian Knowles' judgment gives the first High Court level guidance on the proper approach to consideration of fundamental dishonesty in such cases. He said: "a claimant should be found to be fundamentally dishonest within the meaning of s 57(1)(b) if the defendant proves on a balance of probabilities that the claimant has acted dishonestly in relation to the primary claim and/or a related claim (as defined in s 57(8)), and that he has thus substantially affected the presentation of his case, either in respects of liability or quantum, in a way which potentially adversely affected the defendant in a significant way, judged in the context of the particular facts and circumstances of the litigation. Dishonesty is to be judged according to the test set out by the Supreme Court in *Ivey v Genting Casinos Limited (t/a Crockfords Club)*".

In the instant case (*London Organising Committee of the Olympic and Paralympic Games (in liquidation) v Sinfield*) the Claimant's dishonesty related to his claim for commercial gardening assistance. His Schedule of Loss and witness statement falsely stated that he only employed a gardener as a consequence of the accident, whereas in fact he had done so for many years. In addition, his Disclosure List included invoices purportedly from the gardener, but in fact these were documents created by the Claimant himself. As a result of the finding of fundamental dishonesty the claim, valued at some £26,000, was struck out and the Claimant ordered to pay the Defendant's costs of the action and appeal on the indemnity basis.

Click here to view [judgment](#).

Nine Defendants convicted, and four committed immediately to prison, for "crash for cash" scheme following a 5 day High Court Trial

06/12/2017

Barristers involved: James Laughland

The three drivers of the different accidents were committed to custodial prison services with immediate effect for 16 months, 12 months and 9 months. The passengers each received 4 months prison sentences with all, except one, suspended for one year due to mitigating features.

Please click on links to view Mr Justice Warby's [Press Summary](#) and full [judgment](#).

BNM -v- MGN Judgment, Court of Appeal Success for Claimant on the New Test of Proportionality.

07/11/2017

Barristers involved: Simon Browne QC James Laughland

The Court of Appeal has unanimously held that the saving and transitional provisions in CPR 48, combined with the more limited

definition of “costs” applicable since 1 April 2013 (that now omits any reference to “additional liabilities”), together operated to preserve the former Costs Rules, with their attendant Practice Directions, to the assessment of costs that include additional liabilities.

MGN’s argument that the new proportionality test applied as success fees and ATE premiums could be regarded as “fees” and “expenses” (terms that do appear within both the former and current definition of “costs”) were rejected. Likewise, comparison with the provisions within CPD 48 applicable to the new form of ATE premiums recoverable in clinical negligence proceedings was regarded as unhelpful.

The Court held that the Senior Costs Judge had been wrong to hold that if any exception from the new proportionality test was to be maintained for additional liabilities then that could have been provided for by further exception with CPR 44.3(7). That section uses a definition of costs that no longer makes reference to additional liabilities. He had also been wrong to hold that the former test of proportionality (old CPR 44.4(2)) was not a provision relating to funding arrangements, the term used with paragraph 1.4 of CPD 48.

The Court’s judgment does not, however, provide guidance of wider application on how the new test of proportionality is to be applied in practice. Not only does the issue of proportionality now have to be reconsidered by the Senior Costs Judge but MGN succeeded in their cross-appeal that had challenged his decision to regard as reasonable the Claimant’s decision to issue proceedings without any prior warning or contact with the Defendant; something she had done as part of her pre-issue application for anonymity.

The Court of Appeal held that the Senior Costs Judge had not sufficiently made clear what, if any, weight he had attached to certain criteria relevant to this point and thus directed him to reconsider the issue in the light of their further guidance. Accordingly, much of the base costs remain again at large and must be determined before proportionality is applied to base costs and additional liabilities separately.

A copy of the judgment can be accessed [here](#).

Supreme Court Awards Indemnity Costs

10/07/2017

Barristers involved: James Laughland

Despite the newspaper’s appeal being dismissed they had argued they should only pay 50% of the Respondent’s costs as they had “got the better of the point” as to whether there was a rule in domestic law prohibiting the recovery of such additional liabilities. The Respondents successfully defeated that argument, pointing to the fact the outcome of the appeal had not determined either the existence or scope of “the Rule”. Moreover, as the Respondent, Mr Miller, had made a Part 36 offer shortly after the hearing at first instance, an offer that constituted a substantial discount on the sums being claimed, the Supreme Court has ordered the newspaper to pay his costs in the indemnity basis from March 2016. The Civil Procedure Rules do not apply in the Supreme Court so the entitlement to indemnity costs arising under Part 36 was not present. The Respondent’s Counsel successfully argued that such should nonetheless be awarded to recognise the substantial concession Mr Miller had been prepared to make to compromise this appeal and the fact that had the case gone to the Court of Appeal, and not on a leap-frog to the Supreme Court, he would have been entitled to the additional Part 36 benefits.

Supreme Court Victory

11/04/2017

Barristers involved: Simon Browne QC James Laughland

Simon Browne QC acted for Sadie Frost and another 7 victims in privacy claims as a result of phone hacking by the Mirror Group whilst James Laughland (led by William McCormick QC) appeared for Mr. Miller in a defamation action against the Daily Mail. Another Respondent, Mr Flood was separately represented in a defamation claim against the Times newspaper.

The unanimous decision of the Court, delivered in the speech of Lord Neuberger, determined that additional liabilities were recoverable for the Claimants:

(1) The court declined to decide the fundamental issue of whether there is a general rule as a matter of domestic law that recoverability would infringe publishers’ art.10 rights, and whether they should follow the Strasbourg decision of MGN v. UK. They

say that the UK Government is the most affected party, and they were not present, so they will not decide that issue. The SC proceeded on the assumption that it was applicable.

(2) The court decided in favour of Flood and Miller on the basis that they have A1P1 rights in their CFA/ATE, that somebody's Convention rights would be infringed whatever the outcome, so it was solved by finding the just and appropriate remedy. They held that the A1P1 rights were stronger than the Art 10 rights in these cases, so the costs orders would be upheld.

(3) The court did not expressly decide the Frost cases on that basis, noting that the A1P1 rights were weaker as the CFAs were entered later but they decided it on the broader basis that the general rule (on the assumption it exists) is of no application in cases involving illegality such as found here.

The full speech is found in [2017] UKSC 33 under the title of Times Newspapers Ltd. (Appellant) v Flood (Respondent); Miller (Respondent) v Associated Newspapers Ltd (Appellant); Frost and Other (respondents) v MGN Ltd (Appellant)

Supreme Court hears Newspaper Article 10 challenge to the payment of Additional Liabilities

25/01/2017

Barristers involved: Simon Browne QC James Laughland

The newspapers argue that the payment of such additional liabilities amounts to a breach of their Article 10 right to freedom of expression under the Human Rights Act.

Court of Appeal considers whether, in a fraud case, one Claimant can be excluded from court whilst another Claimant gives their evidence

14/07/2016

Barristers involved: James Laughland

The Court of Appeal held that there was no absolute rule entitling a party to be present in court throughout but did hold that the starting point if the issue arose was that a party is entitled to be present throughout the hearing of a civil trial. The Judge's decision in this case was held to have been wrong as she had failed to base her consideration upon that starting point, if at all. However, when considered as a whole the Court of Appeal was not satisfied that the exclusion of one Claimant had rendered the trial for both unfair and therefore dismissed that ground of appeal.

A separate issue was whether the Judge had been correct to make a finding of fraud in this case. The Court of Appeal found for the Claimants on this and set aside that aspect of the order. However, the Judge's decision that nonetheless the Claimants had failed to prove their case was maintained. In discussion of this aspect of the case the Court of Appeal considered the case of Hussain v Hussain & Aviva [2012] EWCA Civ 1367 and rejected the Claimants' proposition that Hussain establishes the parameters of appropriate inferences that can be drawn in a case where fraud is alleged, but there is no direct evidence connecting the parties alleged to be in a fraudulent conspiracy.

Click [here](#) for Judgment.

Part 36 indemnity costs prevail over "fixed costs"

23/02/2016

Barristers involved: James Laughland

The Court of Appeal today gave judgment to resolve the tension between the provisions in Part 45 limiting low value personal injury RTA, EL & PL cases to fixed costs with the provisions in Part 36 providing for an order for indemnity costs where a Claimant obtains judgment better than the Claimant's own Part 36 offer. The Court of Appeal determined that in such circumstances fixed costs cease to limit the amount of recoverable costs allowable to the Claimant after expiry of the relevant period for acceptance of the Claimant's Part 36 offer. The judgment may be accessed [here](#).

James Laughland acted for the Defendants in these two appeals.

FREEBAR launched

18/02/2016

Barristers involved: James Laughland

James Laughland last night attended the launch of FREEBAR. This is a new LGBT+ networking group established with the support of Stonewall for all those working at or with the Bar. It aims to ensure that at the Bar “Acceptance without Exception” is a real, tangible and shared experience for all. The launch event was hosted by Travers Smith solicitors; promoted by Sir Paul Jenkins, former Treasury Solicitor, Chantal-Aimee Doerries QC, Chair of the Bar Council and HHJ Dight, the lead Diversity Judge and DCJ at Central London and attended by about 150 people: www.freebar.co.uk.

When are Fixed Costs not Fixed Costs?

11/02/2016

Barristers involved: James Laughland

James Laughland, instructed by Horwich Farrelly, appears today in the Court of Appeal for the insurers in two expedited appeals listed before the Master of the Rolls. The issue concerns whether the award of indemnity costs to a Claimant who wins on their Part 36 offer at trial secures for the Claimant something other than the Fixed Costs prescribed by Part 45. The insurers are arguing that fixed costs remain applicable and that such Claimants still retain the other part 36 enhancements.

Newspaper’s challenge to success fees and ATE premium

04/02/2016

Barristers involved: James Laughland

James Laughland, on instructions from Simons, Muirhead & Burton, and being led by William McCormick QC of Ely Place Chambers, today appears before Mr Justice Mitting on an issue arising in a detailed assessment referred from the Senior Costs Judge to a High Court Judge for determination. They are resisting Associated Newspapers’ argument that it would be contrary to the paper’s Article 10 rights for it to be required to pay the additional liabilities incurred by the Claimant, Andrew Millar, who was successful both at trial and on appeal in his defamation action against the Daily Mail. The newspaper relies on the ECtHR’s judgment in MGN Ltd v UK whilst the Claimant argues that Campbell v MGN Ltd (No. 2) remains both good law and binding.
