



## Richard Boyle

Year of Call: 2012

### Practice Areas

- Civil Fraud
- Clinical Negligence
- Costs
- Health & Safety
- Inquests
- Personal Injury
- Public Law

### Attorney General Panel

Appointed to C panel

### Email:

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### Linkedin:

<https://uk.linkedin.com/pub/richard-boyle/82/573/b66>

### Awards



### Experience

Richard has expertise across the range of Chambers' work. He practises private and public law and was appointed to the Attorney General's C panel in 2018. He regularly appears in civil actions in the County Court, the First-tier and Upper Tribunal (Asylum & Immigration Chamber), judicial review proceedings, inquests and costs proceedings. Richard is equally comfortable advising, conducting conferences and drafting in these areas. He prides himself on being approachable, providing pragmatic advice and advocacy skills developed through a busy court practice.

### Personal Injury & Clinical Negligence

Richard acts in all areas of personal injury work, both in the County Court and the High Court. He regularly acts in multi-track claims and is comfortable drafting schedules of loss involving significant six figure sums, including complex loss of pension claims.

Richard has a particular interest in personal injury and clinical negligence claims involving the state. He has expertise in cases involving the military, including claims relating to near-freezing cold injuries, negligent prescription of Iariam, injuries sustained in military camps, such as Camp Bastion, and failure to diagnose PTSD. Richard is representing the Ministry of Defence in a cohort of around 62 claims relating to PTSD suffered during military service. He also receives instructions involving prisons, including prisoner-on-prisoner assaults and

assaults on prison staff.

### **Public Law**

Richard has experience in the fields of military law, police law, prison law, immigration and national security. He is DV security cleared.

Richard acts in all areas of immigration law. As well as the First-tier and Upper Tribunals, he has acted on cases in the High Court, Court of Appeal and SIAC. Richard is also comfortable drafting grounds and advising. He regularly advises on unlawful detention claims.

Richard has acted in a number of public law claims brought against the Ministry of Justice relating to prisoners, including a group action for claimed breaches of the Human Rights Act based on prison conditions.

Richard spent time on secondment with the Independent Police Complaints Commission (now the Independent Office for Police Conduct). He represented the IPCC in judicial review proceedings and inquests, as well as working on the investigations into the deaths of Mark Duggan, Bijan Ebrahimi and Sean Rigg. He is on the IOPC's counsel panel and also receives instructions to draft summary grounds of resistance from police forces.

### **Inquests**

Richard regularly acts in inquests arising out of deaths in prison. He recently had an inquest related to drugs detoxification and is instructed on an inquest relating to new psychoactive substances. He also has experience of inquests following RTAs, involving health and safety issues and involving the police. He provides advice to the Ministry of Justice's Coroners, Burials, Cremation and Inquiries Policy Team. Richard was junior to Nicholas Moss in the high profile inquest into the death of Geoff Gray, the third death at Deepcut barracks.

### **Costs**

Richard often receives instructions to advise and appear in specialist costs proceedings, such as solicitor and client assessments. He has acted in numerous CCMCs and detailed assessments. He was recently instructed by the Lord Chancellor to appear in the High Court in costs proceedings. Richard has particular expertise in claims involving the recovery of ATE premiums. He is a contributor to Greenslade on Costs and an editor of the TGC Costs Newsletter.

### **Civil Fraud**

Richard is frequently instructed in trials, applications and conferences where fraud has been alleged. He often drafts pleadings in such cases. He has been successful in obtaining findings of fundamental dishonesty and successfully defending clients from such allegations.

### **Health & Safety**

Richard was led by Keith Morton QC in a large prosecution against a leading construction company. The case concerned exposure to hand arm vibration over a nine year period. He is building on the knowledge gained from this and developing his health and safety practice.

### **Education**

BSc (Hons) in Biology (First Class), University of Bristol (2010)  
Graduate Diploma in Law, City University (2011)  
Bar Professional Training Course, BPP Law School (London) (2012)

### **Memberships**

Administrative Law Bar Association  
Bar Pro Bono Unit  
Free Representation Unit  
Personal Injury Bar Association  
HSLA

## **Cases**

### **Fuseon Ltd v Senior Courts Costs Office & the Lord Chancellor**

28.01.20

Barristers involved: Richard Boyle

Richard Boyle (instructed by Michael Rimer of the Legal Aid Agency) appeared on behalf of the Lord Chancellor in costs proceedings in the High Court, Administrative Division, heard by Lane J: *Fuseon Ltd v Senior Courts Costs Office & the Lord Chancellor* [2020] EWHC 126 (Admin).

The Claimant had brought a private prosecution for fraud against one of its co-directors. The prosecution was successful and the director was sentenced to three years' of imprisonment. A costs order was made in the Claimant's favour for the costs of the prosecution. Those costs were determined by a Determining Officer (an employee of the Lord Chancellor) whose decision was appealed to Master Rowley. Master Rowley refused to alter the Determining Officer's decision or certify any points of principle of general importance meaning that the Claimant had no right of appeal. As a result, the Claimant brought an unusual action, seeking to invoke the High Court's inherent jurisdiction to quash the decision of Master Rowley on the basis that there had been a real injustice. To do so, it brought an action in the High Court against the Senior Courts Costs Office and the Lord Chancellor.

Lane J held that there had been a real injustice in relation to the appropriate hourly rates and also the application of the Singh reduction. However, he made a number of comments of application to future cases. He stated that a real injustice required more than just an error in law and must cause the Claimant very serious prejudice. He held that there may be grounds to compare the costs of private prosecutions with those charged by the CPS.

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## **C v Skyfire Insurance**

27.09.19

Barristers involved: Richard Boyle

Richard represented the Defendant insurance company in this personal injury claim arising out of a road traffic accident.

The Claimant's case was that he came to a halt and the Defendant's driver came in to the rear of him. The defence was that the Defendant's driver was stationary at a junction and the Claimant reversed in to him.

HHJ Sephton QC found the Defendant's driver to be credible. He noted inconsistencies in the Claimant's evidence relating to the damage to the vehicles, the Claimant's previous claims, medical history and medical treatment following the accident. He found that the Claimant had sought to attribute unrelated damage to the index accident and was fundamentally dishonest.

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## **Soldier B v Ministry of Defence**

06.01.20

Barristers involved: Richard Boyle

Richard represented the Ministry of Defence in this personal injury and clinical negligence claim arising out of the Claimant's PTSD, suffered during his service with the Army.

The Claimant developed PTSD following incidents on two tours of Afghanistan. He was diagnosed with PTSD in January 2015. The Claimant alleged that the Defendant's medical staff should have diagnosed him with PTSD two years previously. The Defendant argued that its Regimental Medical Officer ("RMO") had acted reasonably in deciding to review the Claimant rather than refer him to the Department of Community Mental Health. It argued that the Claimant was not displaying PTSD symptoms on later attendances with the RMO. Furthermore, it argued that any delay in treatment had not exacerbated the Claimant's symptoms.

The claim was issued for a value of more than £200,000 but settled for a global sum of £25,000 including costs.

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## **Inquest in to the death of Prisoner A**

13.09.19

Barristers involved: Richard Boyle

Richard was instructed by the Ministry of Justice to represent a prison at which Prisoner A had died. Prisoner A had been on a drugs detoxification ward and prescribed methadone. There was conflicting evidence as to whether his death had been caused by methadone, another drug obtained illicitly or both. There were issues about the extent of supervision of Prisoner A from both the prison and the healthcare provider during night state.

The jury's conclusion was that Prisoner A died from multi-drugs toxicity. It noted that the process of physical monitoring had been inadequate, without referring specifically to either the prison or healthcare

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## **Inquest in to the death of Geoff Gray**

20.06.19

Barristers involved: Richard Boyle

On 20.06.19, HH Peter Rook QC delivered detailed factual findings and a combined narrative and short form conclusion in the fresh inquest into the death of Pte Geoff Gray at Deepcut barracks on 17 September 2001. Nicholas Moss represented the Ministry of Defence and individual soldiers/civil servants, leading Richard Boyle (TGC), Georgina Wolfe and Cicely Hayward (5 Essex Court). The inquest sat for 28 days over 2½ months, and received evidence from 105 witnesses.

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The short form conclusion was “suicide”. Following the decision in Maughan [2019] EWCA Civ 809, the Coroner applied the civil standard of proof but was in any event satisfied to the criminal standard of proof that the death was by suicide.

As had been accepted in concessions made by MOD, the Coroner found that greater attention should have been paid to the self-harm risks of young trainees carrying out armed guard duty. The narrative findings in the Record of Inquest were that:

“At approximately 01.10 hours on 17 September 2001 in the grounds of the Officers’ Mess at the Princess Royal Barracks, Deepcut, Surrey, Private Geoff Gray shot himself with a SA80 rifle that was set to automatic, causing two wounds to the head. He died rapidly at the place where his body was found. No third party was involved in the shooting. At the time Geoff fired the shots he intended to take his own life, although that state of mind may have only been transient.

Geoff’s actions could not reasonably have been anticipated at the time. He did not suffer with any known psychological difficulties nor had he been the recipient of any ill treatment. Any concerns Geoff may have had did not relate to the camp regime. However the army had failed adequately to address the risk of self-harm that might arise in respect of young and inexperienced trainees performing guard duty with unsupervised access to firearms. Proposals that trainees should not provide the Barracks’ guard, but be replaced with a professional guard force had not yet been acted upon.

While it was entirely Geoff’s decision to take his own life, the above failures provided Geoff with an opportunity to go to an isolated location with a firearm where he could act as he did.”

Noting a wide range of improvements evidenced by the Army (including in guarding arrangements, training supervisory ratios, destigmatisation of soldiers seeking welfare support, and in Trauma Risk Management), the Coroner decided it was not necessary to make any Preventing Future Deaths Report to the Ministry of Defence, stating,

“In the light of the changes in structure, culture and practice since Geoff’s death, the evidence at this inquest has not revealed to me any area where it appears that the army have either not already taken action or are not cognisant of and already pursuing the relevant action to prevent future deaths.”

The Coroner was strongly critical of the failings in the original investigations into the death. A PFD report was issued to the Chief Coroner and the President of Royal College of Pathologists concerning the desirability of further guidance being issued on the type of post-mortem to be carried out in cases of death by gunshot wounds, even if the initial evidential inquiries point to self-infliction. In Geoff Gray’s case, a normal Coroner’s post-mortem had been carried out, not a forensic post-mortem.

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## **HSE v A Construction Company**

28.06.18

Barristers involved: Richard Boyle

Richard was led by Keith Morton QC in a large prosecution against a leading construction company. The case concerned exposure to hand arm vibration over a nine year period. The Defendant raised an abuse of process argument which led to the Prosecution accepting a partial guilty plea. The Defendant received a fine for a far lower sum than contended for by the Prosecution.

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## **Banks v London Borough of Hillingdon**

05.06.16

Barristers involved: Richard Boyle

Richard Boyle (instructed by Faith Cosgrove of A & M Bacon) appeared in an appeal before HHJ Walden-Smith, sitting with DJ Lethem as an assessor. The judge allowed the appeal against Master Gordon-Saker (as he was then) in which the master had made

a “broad brush” reduction of an ATE premium

Richard Boyle (instructed by Faith Cosgrove of A & M Bacon) appeared in an appeal before HHJ Walden-Smith, sitting with DJ Lethem as an assessor. The judge allowed the appeal against Master Gordon-Saker (as he was then) in which the master had made a “broad brush” reduction of an ATE premium.

The judge stated that the master had been wrong to consider the reasonableness of the premium and had failed to follow the Court of Appeal’s decision in *Rogers v Methyr Tydfil County Borough Council* [2006] EWCA Civ 1134. She held that a costs master or district judge does not have information about the entire insurance book or calculations that underpin that book and is in no position to regulate the appropriate level of premium. She held that the master had fallen in to error by considering the premium against the individual case rather than the entire basket of risk to which the insurer was exposed.

The master had held that Rogers did not prevent him from making a broad brush assessment of the reasonableness of the ATE premium and relied on the authorities of *Redwing Construction Ltd v Charles Wishart* [2011] EWHC 19 (TCC) and *Kelly v Blackhorse Ltd* (27 September 2013). On appeal, the judge held that the master had not followed the binding authority of Rogers which warned against the use of a broad brush approach of the reasonableness of an ATE premium. The judge found that Redwing should have been distinguished because it involved a summary assessment of costs and there was no evidence in that case of how the ATE premium had been calculated. The judge found that Kelly was only persuasive but could be distinguished because it involved a single stage premium, unlike the instant case, and no evidence had been produced of how that ATE premium had been calculated. The judge found that the correct method to challenge the level of an ATE premium is through adducing evidence to show that the premium is unreasonable (e.g. evidence of other premiums), as set out in *Kris Motor Spares Ltd v Fox Williams LLP* [2010] EWHC 1008. No evidence was produced in the instant case and the appeal was allowed and the ATE premium awarded in full.

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## **Calle v Secretary of State for the Home Department**

29.01.15

Barristers involved: Richard Boyle

Richard represented the Appellant who was seeking a right of residence in the UK based on her EEA national child. The Appellant was estranged from the father of her EEA national child and therefore had little evidence to prove that the father was exercising his treaty rights by working

The First Tier Tribunal ordered the Respondent to disclose evidence of the EEA national’s salary from HMRC. The judge then found for the Appellant.

The Respondent appealed on the basis that the judge had not addressed any elements of the test set out at regulation 15A of the Immigration (European Economic Area) Regulations 2006, other than whether the Appellant was her daughter’s primary carer. The judge had not stated explicitly in his judgment that these matters had been conceded by the Respondent.

The Upper Tribunal found that the First Tier Tribunal judgment had lacked clarity but the failure to set out the concessions was not an error of law. In addition, the judge approved the submission that regulation 15A was inconsistent with EU law when requiring the EEA national parent to be working at the time that the EEA national child enters formal education (as set out in *Ahmed (Amos; Zambrano; Reg 15A(3)(c)* [2006] EEA Regs) [2013] UKUT 00089 (IAC)).

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## **Solider A v Ministry of Defence**

26.02.2018

Barristers involved: Richard Boyle

Richard Boyle, instructed by Clare Dalby of Wace Morgan Solicitors, settled a soldier’s claim for a significant sum at a joint settlement meeting.

The soldier had been given anti-malarial drug lariam, also known as mefloquine, by the army before a deployment. He was not given a face-to-face consultation in advance of the lariam prescription and the prescription was not noted in his medical records at the time. This was despite the fact that depression and other severe psychological symptoms were known side effects of lariam.

The soldier experienced psychiatric injury which led to him being medically evacuated back to the UK from the deployment. The soldier suffered ongoing psychiatric injury. The Ministry of Defence agreed to pay the soldier a significant sum in damages.

The army's decision to give lariam to soldiers and prescribe it without a face-to-face consultation has been the subject of controversy and criticism from the House of Commons defence committee (see <https://www.theguardian.com/uk-news/2016/may/24/mps-sound-alarm-british-troops-use-malaria-drug-lariam>). The case is believed to be one of the first to reach settlement.

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## Publications

### **TGC Costs Newsletter Vol V**

10/12/2019

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

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

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

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### **TGC Costs Newsletter Vol IV**

04/06/2019

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

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

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

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### **TGC Costs Newsletter Vol III**

10/12/2018

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

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

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

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### **TGC Costs Newsletter**

17/05/2018

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

Please see link below to the latest TGC Costs Newsletter.

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

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### **TGC Fraud Update February 2016**

03/02/2016

Authors: Charles Curtis Marcus Grant Edward Hutchin George Davies Tim Sharpe Anthony Johnson James Henry Richard Boyle Matthew Waszak

Facing up to the challenge of fraud rings. Please see link below for the second edition of TGC Fraud Update, a publication which was set up with the stated aim of facilitating the sharing of information about decided claims involving issues of road traffic fraud and related matters. Thank you also for all of the kind words and helpful feedback received about the inaugural edition.

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

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## News

## Richard Boyle represents the Lord Chancellor in costs proceedings before the High Court

28/01/2020

Barristers involved: Richard Boyle

The Claimant had brought a private prosecution for fraud against one of its co-directors. The prosecution was successful and the director was sentenced to three years' of imprisonment. A costs order was made in the Claimant's favour for the costs of the prosecution. Those costs were determined by a Determining Officer (an employee of the Lord Chancellor) whose decision was appealed to Master Rowley. Master Rowley refused to alter the Determining Officer's decision or certify any points of principle of general importance meaning that the Claimant had no right of appeal. As a result, the Claimant brought an unusual action, seeking to invoke the High Court's inherent jurisdiction to quash the decision of Master Rowley on the basis that there had been a real injustice. To do so, it brought an action in the High Court against the Senior Courts Costs Office and the Lord Chancellor.

Lane J held that there had been a real injustice in relation to the appropriate hourly rates and also the application of the Singh reduction. However, he made a number of comments of application to future cases. He stated that a real injustice required more than just an error in law and must cause the Claimant very serious prejudice. He held that there may be grounds to compare the costs of private prosecutions with those charged by the CPS.

A link to the judgment can be found [here](#).

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## TGC Costs Newsletter

10/12/2019

Barristers involved: Simon Browne QC James Laughland Shaman Kapoor Lionel Stride Anthony Johnson Richard Boyle Matthew Waszak Ellen Robertson Elizabeth Gallagher James Yapp Harriet Wakeman  
Please see link below to the 5th edition of the the TGC Costs Newsletter.

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

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## Deepcut: Private Geoff Gray inquest conclusions delivered

20/06/2019

Barristers involved: Nicholas Moss Richard Boyle

The short form conclusion was "suicide". Following the decision in Maughan [2019] EWCA Civ 809, the Coroner applied the civil standard of proof but was in any event satisfied to the criminal standard of proof that the death was by suicide.

As had been accepted in concessions made by MOD, the Coroner found that greater attention should have been paid to the self-harm risks of young trainees carrying out armed guard duty. The narrative findings in the Record of Inquest were that:

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Geoff's actions could not reasonably have been anticipated at the time. He did not suffer with any known psychological difficulties nor had he been the recipient of any ill treatment. Any concerns Geoff may have had did not relate to the camp regime. However the army had failed adequately to address the risk of self-harm that might arise in respect of young and inexperienced trainees performing guard duty with unsupervised access to firearms. Proposals that trainees should not provide the Barracks' guard, but be replaced with a professional guard force had not yet been acted upon.

While it was entirely Geoff's decision to take his own life, the above failures provided Geoff with an opportunity to go to an isolated location with a firearm where he could act as he did."

Noting a wide range of improvements evidenced by the Army (including in guarding arrangements, training supervisory ratios, destigmatisation of soldiers seeking welfare support, and in Trauma Risk Management), the Coroner decided it was not necessary to make any Preventing Future Deaths Report to the Ministry of Defence, stating,

“In the light of the changes in structure, culture and practice since Geoff’s death, the evidence at this inquest has not revealed to me any area where it appears that the army have either not already taken action or are not cognisant of and already pursuing the relevant action to prevent future deaths.”

The Coroner was strongly critical of the failings in the original investigations into the death. A PFD report was issued to the Chief Coroner and the President of Royal College of Pathologists concerning the desirability of further guidance being issued on the type of post-mortem to be carried out in cases of death by gunshot wounds, even if the initial evidential inquiries point to self-infliction. In Geoff Gray’s case, a normal Coroner’s post-mortem had been carried out, not a forensic post-mortem.

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## **TGC Costs Newsletter**

04/06/2019

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

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

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## **TGC Costs Newsletter**

10/12/2018

Barristers involved: Simon Browne QC Shaman Kapoor Mark James Richard Wilkinson Paul McGrath Richard Boyle Lionel Stride Ellen Robertson James Yapp Robert Riddell Matthew Waszak  
Please see link below to the latest update from the TGC Costs Team.

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

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## **TGC Costs Newsletter**

17/05/2018

Barristers involved: Shaman Kapoor Paul McGrath Richard Boyle James Arney James Laughland Sian Reeves Matthew Waszak Lionel Stride Ellen Robertson  
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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## **Damages for soldier who suffered psychiatric injury following prescription of lariam**

06/03/2018

Barristers involved: Richard Boyle

The soldier had been given anti-malarial drug lariam, also known as mefloquine, by the army before a deployment. He was not given a face-to-face consultation in advance of the lariam prescription and the prescription was not noted in his medical records at the time. This was despite the fact that depression and other severe psychological symptoms were known side effects of lariam. The soldier experienced psychiatric injury which led to him being medically evacuated back to the UK from the deployment. The soldier suffered ongoing psychiatric injury. The Ministry of Defence agreed to pay the soldier a significant sum in damages.

The army’s decision to give lariam to soldiers and prescribe it without a face-to-face consultation has been the subject of controversy and criticism from the House of Commons defence committee (see link). The case is believed to be one of the first to reach settlement.

You can view the publication at

<https://www.theguardian.com/uk-news/2016/may/24/mps-sound-alarm-british-troops-use-malaria-drug-lariam>

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## **Richard Boyle appointed to Crown “C” Panel**

01/02/2018

Barristers involved: Richard Boyle

TGC offers congratulations to Richard Boyle on his appointment as Junior Counsel to the Crown “C” Panel by the Attorney General with effect from 1 March 2018.

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## **TGC Costs Newsletter**

04/07/2017

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

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

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

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

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

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

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## **HHJ Walden-Smith overturns a “broad brush” reduction of an ATE premium on appeal**

07/07/2016

Barristers involved: Richard Boyle

The judge stated that the master had been wrong to consider the reasonableness of the premium and had failed to follow the Court of Appeal’s decision in *Rogers v Methyr Tydfil County Borough Council* [2006] EWCA Civ 1134. She held that a costs master or district judge does not have information about the entire insurance book or calculations that underpin that book and is in no position to regulate the appropriate level of premium. She held that the master had fallen in to error by considering the premium against the individual case rather than the entire basket of risk to which the insurer was exposed.

The master had held that *Rogers* did not prevent him from making a broad brush assessment of the reasonableness of the ATE premium and relied on the authorities of *Redwing Construction Ltd v Charles Wishart* [2011] EWHC 19 (TCC) and *Kelly v Blackhorse Ltd* (27 September 2013). On appeal, the judge held that the master had not followed the binding authority of *Rogers* which warned against the use of a broad brush approach of the reasonableness of an ATE premium. The judge found that *Redwing* should have been distinguished because it involved a summary assessment of costs and there was no evidence in that case of how the ATE premium had been calculated. The judge found that *Kelly* was only persuasive but could be distinguished because it involved a single stage premium, unlike the instant case, and no evidence had been produced of how that ATE premium had been calculated. The judge found that the correct method to challenge the level of an ATE premium is through adducing evidence to show that the premium is unreasonable (e.g. evidence of other premiums), as set out in *Kris Motor Spares Ltd v Fox Williams LLP* [2010] EWHC 1008. No evidence was produced in the instant case and the appeal was allowed and the ATE premium awarded in full.

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## **TGC Defeats Fraudster ‘in business’ of false RTA Claims**

13/05/2016

Barristers involved: Alex Glassbrook Richard Boyle

The Defendant's insurer also succeeded in its counterclaim to recover an interim payment from the fraudster, with interest awarded at the commercial rate and its costs to be assessed on the indemnity basis. They also succeeded permission to enforce costs orders fully against the fundamentally dishonest claimant.

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## **TGC Fraud Update**

03/02/2016

Barristers involved: Charles Curtis Marcus Grant Edward Hutchin George Davies Tim Sharpe Anthony Johnson James Henry Richard Boyle Matthew Waszak

Thank you for reading this second edition of TGC Fraud Update, a publication which was set up with the stated aim of facilitating the sharing of information about decided claims involving issues of road traffic fraud and related matters. Thank you also for all of the kind words and helpful feedback received about the inaugural edition.

Some of the trickiest types of fraud cases to defend at trial are those involving fraud rings- linked cases involving several separate purported road traffic accidents featuring the same or overlapping personnel (sometimes organised criminals, albeit frequently caught out by their disorganisation!) and usually deliberately staged, contrived or induced accidents. Often there is an overall 'guiding mind' linking seemingly unrelated incidents, be it an individual, an accident management or hire company or even a firm of solicitors.

However, one of the challenges that arises is that intelligence can never be perfect and often the identities of some of the dramatis personae will never be known (this may well often be because they do not exist). Often the fraud ring cases that do reach trial are those where the links between the claims and the claimants are at their most oblique- direct evidence of communication and co-operation between individuals who claim not to know each other is usually enough to scare off even the most stubborn claimant solicitors!

As with most rapidly developing areas of law, information about the outcome of decided claims, and more importantly the reasons behind them, is a great way equipping oneself to best tackle future claims where the same or similar issues are raised. Fortunately, TGC has had a glut of fraud rings successfully defended to trial in the last couple of months- the lead article focusses on the particular challenges posed (and duly overcome) in some of these cases. It can be seen that thorough preparation is critical, as these types of cases are invariably 'document heavy', but also that there is no substitute for demolishing the credibility of a suspect individual through robust cross-examination.

The TGC fraud team are more than happy for you to contact them if you have any queries about any of the contents of this issue, or indeed about any other issues relating to insurance fraud and related matters.

[TGC Fraud Update February 2016](#)

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