



C O R

1 CROWN OFFICE ROW

1COR Bundle

2024-25

The annual newsletter of
1 Crown Office Row



Welcome to the 13th edition of the 1COR Bundle

It gives me great pleasure to welcome you to the thirteenth edition of the 1COR Bundle.

13 – unlucky for some? I am not particularly superstitious, but 13 has always been regarded as a lucky number in my family. Apart from my lovely Mum having her birthday on May 13th, it was 2013 when I took Silk and Ede and Ravenscroft marked my Silk's gown as "13/2013".

Well, what's new? We have a new government, together with new Law Officers. Of course, the days when one could combine a successful career at the Bar with being a diligent MP have gone – the late Roderic Bowen QC of 1 Crown Office Row was MP for Cardiganshire from 1945 to 1966. However, among the newly elected Members of Parliament in 2024, it gave us particular pleasure to see that our recent former member, Henry Tufnell, had been elected as MP for Mid and South Pembrokeshire. Henry will be a very conscientious MP and we wish him well.

Closer to home, we received the wonderful news that David Manknell had been appointed King's Counsel. We congratulate David, one of the most self-effacing barristers you will meet, who thoroughly deserves this appointment.

1 Crown Office Row now has 78 members in London, including 24 KCs, and 53 members in Brighton, including 2 KCs. We are very fortunate to be in good health.

Added to our number in London over the past year were Benjamin Seifert, Robert Mills, Rebekah Lee and Paula Kelly (the latter two following the completion of 12 month pupillages). We are delighted to welcome Ben, Rob, Rebekah and Paula, and are particularly pleased that they have "mucked

in" for Chambers straight away, from attending the AvMA conference to dancing at a ceilidh to strengthening the 1COR Beach Volleyball team.

Among our senior juniors, Caroline Cross has become one of our Academic Consultants, and we bid a fond farewell to Matthew Flinn, who returns to his native New Zealand, becoming an overseas Associate Member. Their combined contributions to Chambers have been inspiring and immense, and we look forward to seeing as much of both of them as possible.

2024 also marks 50 years since two of our utter legends, Lizanne Gumbel KC and Philip Havers KC, were called to the Bar. Hard to believe, I know, especially given their ongoing stellar practices. We congratulate Lizanne and Philip and thank them for their remarkable service to Chambers.

You will read in these pages of the range and quality of work done by our members. None of this would be possible without either the high quality instructions we receive from our professional clients or without the efforts of our excellent clerking team led by our Senior Clerk, Matthew Phipps. We are extremely lucky to have both such delightful professional clients and such loyal and dedicated clerks and support staff. We thank you for choosing to instruct barristers at 1 Crown Office Row – we really are very grateful to you.

I hope you enjoy reading the 1COR Bundle. We look forward to seeing many of you again over the next year.

Richard Booth KC
Head of Chambers



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The Inside Story

The last 12 months in Chambers

Success at Chambers UK Bar Awards 2023

There was particular success for 1COR at the Chambers UK Bar Awards last year, as **Lizanne Gumbel KC** and **Matthew Barnes** won Clinical Negligence Silk and Junior of the year respectively. In addition 1COR as a whole was nominated for set of the year in two categories, Clinical Negligence, and Inquests & Public Inquiries, while three other members were nominated across a range of



categories: **Jo Moore** (Diversity & Inclusion: Future Leader), **Angus McCullough KC** (Human Rights and Public Law Silk of the Year), and **Justin Levinson** (Personal Injury Junior of the Year).



Legal Aid Outstanding Achievement Award

Oliver Sanders KC and **Jessica Elliott** were awarded the prestigious Legal Aid Lawyer of the Year Outstanding Achievement Award by the Legal Aid Practitioners' Group, alongside their instructing solicitors Merry Varney and Caleb Bawdon of Leigh Day. The award was given in recognition of their hard work on behalf of the family of Molly Russell. The inquest into her death highlighted the impact of harmful content available on social media platforms, in Molly's case Instagram and Pinterest.



New appointments to Attorney General's Panel of Counsel

We're delighted to announce that from 1st September 2023, **Paul Reynolds**, **Emma-Louise Fenelon** and **Jo Moore** have been promoted to the Attorney General's B Panel of Counsel, and **Amelia Williams**, has been newly appointed to the C Panel of Counsel. These appointments bring the number of 1 Crown Office Row members on the Attorney General's Panels up to 23.



Senior Clerk Matt Phipps marks 40 years in Chambers

Matt joined 1COR on 3rd October 1983 as a junior clerk, and has served as Senior Clerk since 1999. When Matt joined there were 24 members including four silks. He has played a pivotal role in the development and expansion of the set, which now comprises over 78 members in London, including 24 silks. Although still an active clerk himself, Matt heads up the clerking team and is responsible for all aspects of Chambers' practice management, and plays a key role in the marketing, business development and strategic planning. Matt's clerking team is continuously recommended by the legal directories as a 'Top 20 Set for Client Service' and has been described by instructing solicitors as "the best in the industry" (Chambers & Partners). Congratulations from all at 1COR to Matt on this milestone anniversary.



MND 10km

In October **Clodagh Bradley KC** undertook a 10km run for the Motor Neurone Disease Association (MND) in support of a close friend of hers with the disease who also completed the run. Despite only having run her first 10k the weekend before, Clodagh had a respectable time of 1hr, 1min 40s and raised an incredible amount for #TeamMND. She says a big thank you to everyone who kindly sponsored her!



New silk appointment

We are delighted to announce that **David Manknell** has been appointed King's Counsel. David has extensive experience in public law, inquests and medical law, and is described in the directories as "a powerful intellect, very hardworking, great judgement...", "a tenacious lawyer and persuasive advocate", and "excellent, conscientious and a pleasure to work with." As well as having acted in some of the most high-profile, significant and complex cases in his fields, he also sits as an Assistant Coroner for Inner South London.



Welcoming new tenants to 1COR

Following the successful completion of their pupillages, **Paula Kelly** and **Rebekah Lee** have joined 1COR as new tenants. Both were called to the Bar in 2022. Before commencing pupillage, **Paula** spent several years advising MPs on policy and legislation, and was a Kennedy Scholar at Harvard Law School between 2021 and 2022, where she volunteered as a student attorney defending low-income criminal defendants. **Rebekah** spent three months working in South Africa with a leading human rights organisation assisting with constitutional matters and indigenous land rights.

We were also pleased to welcome **Robert Mills** and **Benjamin Seifert** to 1 Crown Office Row.

Robert was called in 2014 and is a clinical negligence specialist, acting for both claimants and defendants. He has experience of litigation across a wide range of areas of medicine, with a particular interest in obstetrics, brain injuries, oncology, orthopaedics and cardiology. He also conducts clinical negligence inquest work and is experienced in handling high value litigation involving life-changing injuries.

Benjamin was called in 2007 and is a specialist public law practitioner and a highly regarded extradition barrister, with extensive experience representing individuals, UK and foreign governments and requesting judicial authorities in the European Union. He is frequently instructed by the Government in complex judicial reviews concerning immigration and prison law.

1COR Christmas Card Competition 2023

Thank you to everyone for sending in your guesses for who was in the snow globe this year, and well done to those who spotted **Edward Waldegrave** and **Amelia Williams**!

Our winner was Jonathan De Wilton of Grant Thornton UK LLP, who nominated Bridewell Gardens Mental Health Recovery as his charity of choice. Bridewell is a mental health recovery service providing social and therapeutic horticulture in a working garden to adults living in Oxfordshire. Our additional donation this year will be going to Air Ambulances UK.



Health Law



1COR in Court of Appeal

The Court of Appeal was treated to an all-1COR showing in *CDE v Surrey & Sussex Healthcare NHS Trust* [2023] EWCA Civ 1330. The Claimant suffered acute profound hypoxic ischemia ("PHI") at birth and appealed the first instance finding that the earlier attachment of a CTG trace would not have led to an earlier birth and thus reduced the level of injury sustained. The case has been remitted to the Judge to consider the issue as to what difference delivery a minute



earlier would have made to the brain injury suffered. **Lizanne Gumbel KC** was instructed by Fieldfisher for the Claimant. **Neil Sheldon KC** was instructed for the Defendant by Capsticks.

Judgment secured



John Whitting KC and **Jo Moore**, instructed by Caron Heyes and Louise Astill of Fieldfisher, have secured judgment for the Claimant in a high value birth injury claim. The Claimant's case was that

his mother was not properly advised of the benefits of serial growth scans during pregnancy and that, had she been, she would have agreed to have them. It was agreed that those scans would have shown that the Claimant was in breech position leading to hospital delivery. In fact, the breech went undiagnosed and the Claimant was delivered at home, suffering an acute profound hypoxia ischaemia which the Trust admitted would have been avoided with hospital care.

Damages for overseas commercial surrogacy

Suzanne Lambert, instructed by Anna-Claire Marks of Enable Law, has secured damages for two commercial surrogacies in a claim involving complex C-section and Asherman's syndrome. Although limited liability admissions were made, the Hospital Trust put the Claimant to proof as to the full extent and causation of her injury and loss. The matter was settled in mediation and resulted in the Trust agreeing to pay damages including the costs of a commercial surrogacy in the US.

Football and fundamental dishonesty

Sarah Lambert KC acted on behalf of the Defendant in *NH v Stoke City Football Club*, defending claims of clinical negligence in the assessment and treatment of knee pain in a player for the club's youth academy. Sarah achieved discontinuance of the entire claim shortly before trial as a result of an Amended Defence alleging fundamental dishonesty. Sarah was instructed by Rachel Thompson of DWF Law LLP Newcastle.



Untangling the web

John Whitting KC and **Jessica Elliott** acted for the Claimant (instructed by Katherine Pearce of Davies & Partners) in a complex spinal case in which an NHS Trust admitted that it had failed to identify and correct a tethered spinal cord while the Claimant was a toddler. Instead the condition went

Cerebral palsy cooling case settled

Shaheen Rahman KC

represented the Defendant Trust, instructed by Lisa Spencer at Weightmans, in a case concerning a child who had suffered a long period of acute profound hypoxia at birth, but had only mild injuries having received therapeutic cooling. It was alleged that there was 5 minute delay in delivery and argued that the outcome demonstrated that with earlier delivery, plus cooling, the child would have



suffered no damage. Breach of duty and causation were in issue, however a settlement on a lump sum basis was achieved shortly before the liability trial.

Damages for non-verbal communicative girl

Clodagh Bradley KC, instructed by Mark Bowman of Fieldfisher on behalf of the Claimant, compromised a claim where **Jeremy Hyam KC** was instructed by Deborah Pyzer of Bevan Brittan for the Defendant. As a result of admitted negligence at the time of her birth in 2018, a young girl has dyskinetic quadriplegic cerebral palsy and global developmental delay, but relatively preserved cognition. The 6-year-old Claimant attends mainstream school with 1:1 support. Although non-verbal, she communicates with facial expressions and is now learning to use eye gaze technology to great effect. In early 2024, the parties negotiated a settlement comprising a lump sum and PPOs equivalent to £15,000,000 capitalised.

undiagnosed for many years. The Claimant's presentation included urological dysfunction (admitted caused by the delay) but also chronic pain, functional neurological disorder, generalised anxiety disorder and cognitive impairment all of which the Trust argued were unrelated to her spinal pathology. The

web-like interrelationship between those conditions was the subject of fierce debate between the parties leading to a raft of expert evidence. After protracted negotiations, the matter was resolved in early December 2023, the Trust having agreed to make a multimillion pound lump sum payment to the Claimant.

"Elementary, my dear Watson"

Richard Smith represented the Defendant at trial concerning a Claimant who alleged that the Defendant, a world-renowned expert in fibroid surgery, employed negligent technique. The Claimant was found to have a perforated bowel five days following that surgery. The nature of the injury did not point to any particular mechanism as to how it was caused, and the Defendant was adamant that he could not have caused the injury. The Claimant's expert advanced two theories, which were disputed by the Defendant and his expert as being likely causes.



The claim was dismissed with the Judge accepting Richard's submission that the Claimant's expert had succumbed to the "Sherlock Holmes fallacy" (that the least unlikely explanation, however implausible, must be true) whereas a likely explanation is required in civil litigation. Richard was instructed by Sam Holden of Clyde & Co.

Planning for future needs

Matthew Barnes was instructed by the Claimant in a claim for damages in respect of failures in managing a left leg fracture that caused him to require a below the knee amputation. The Claimant's position was challenging in circumstances where he had made a good recovery from the amputation. Nonetheless,

he argued that whilst capable of undertaking most tasks, he should not be expected to do so if it exposed him to fatigue and the risk of deterioration from overuse; furthermore, deterioration in later life was likely. The claim settled for £2,600,000 at ADR. Matthew was instructed by Arti Shah of Fieldfisher.

Undiagnosed diabetes claim

John Whitting KC, leading **Suzanne Lambert** and instructed by Olive Lewin of Leigh Day, has secured settlement in an undiagnosed diabetic's spinal abscess claim. Blood tests taken while the Claimant was at his GP surgery for a cardiovascular assessment showed raised glucose levels but no action was taken. He subsequently developed severe neck pain and stiffness and was taken to A&E. An MRI showed an abscess compressing his spinal cord leading to emergency surgery. A claim was brought against the GP surgery and the Hospital Trust and was settled for several million pounds.



Missed breast cancer

Leanne Woods, instructed by Christina Gardiner at Fieldfisher, acted for a Claimant in a claim arising from breast cancer being missed on breast screening mammograms done 3 years apart. It was the Claimant's case that, but for the negligent errors, she would have had a normal life expectancy. Instead her life expectancy was cut to around 4 years. Liability was denied. The claim, which settled at an RTM, included a significant lost years claim arising from self-employed earnings and a private pension, as well as a substantial claim for palliative care.



Dental claim dismissed

Darragh Coffey, instructed by Jack Waller of the MDU, has successfully represented a dentist in a multi-track clinical negligence trial. Allegations included failure to obtain the patient's informed consent and negligent administration of local anaesthetic. The court was persuaded by Darragh's submissions that the Defendant's expert should be preferred, leading to the claim being dismissed.



Surgery to remove foreign object causes hearing loss

Rachel Marcus, instructed by Rebecca Drew of Fieldfisher, successfully represented a child who suffered hearing loss following surgery to remove an object stuck in his ear. At some point during surgery the ossicular chain was damaged, resulting in

permanent unilateral hearing loss. The judge determined there had been a breach of duty after applying the Bolam and Bolitho tests. Damages were secured for ongoing care and treatment as well as compensation for previous suffering.



Limitation extended in fatal cancer claim

Shahram Sharghy was instructed for the Claimant by David Greenhalgh of Clarkson Wright & Jakes Solicitors in a novel case where the Defendant argued that there was no power to extend limitation under section 33 of the Limitation Act 1980, when the primary limitation period had expired prior to death. The Defendant's argument was rejected by the court and the law clarified (*Shaw v Maguire* [2023] EWHC 2155 (KB)).

Secondary victims of clinical negligence – an exception?

Shahram Sharghy was instructed by Will Jones of Fieldfisher to represent parents who were called to the operating theatre as their child went into cardiac arrest, owing to the negligent insertion of an endotracheal tube. They witnessed the negligent event (as the tube remained in situ) and the events that followed resulting in death. This type of scenario would be the exception envisaged by the Supreme Court in *Paul & Ors v. Royal Wolverhampton NHS Trust & Ors* [2024] UKSC 1.

Valuing care in Oz

Henry Witcomb KC and **Paul Reynolds** represented the Claimant and **Cara Guthrie** (led by Simeon Maskrey KC) represented the Defendant in an undiagnosed pulmonary embolism claim brought by a young Australian woman. The Claimant had suffered cardiac arrest, brain injury and sight loss; she subsequently returned to Australia. The many complex quantum issues included: the appropriate discount rate, whether a periodical payment order could be made, the

appropriate Australian carer's index and the Australian tax treatment of the award. Each side instructed Australian tax experts, economists, actuaries and indexation experts. The parties were able to reach a periodical payment settlement, including indemnity as to the tax treatment of the award. Henry and Paul were instructed by Emma Doughty from Slater and Gordon, and Cara was instructed by Christopher Malla of Kennedys.



Delayed defibrillation

Robert Kellar KC, instructed by Emma Doughty at Slater and Gordon, is representing a 9-year-old girl with profound hypoxic ischaemic brain injury and dystonic cerebral palsy, following a cardiac arrest at age 3. After collapsing outside her home, a delayed defibrillation led to a delayed cardiac rhythm restoration. It was argued that with competent care, the Claimant would have avoided all neurological damage. The Defendant initially contended that significant neurological injury was inevitable due to the cardiac arrest and the time it took for the ambulance and defibrillator to arrive. The Defendant has since been persuaded to concede medical causation, with judgment entered for the Claimant.

"Subtle" and unexpected radiology findings

Jim Duffy, instructed by Will Jones at Fieldfisher, acted for a child whose bilateral developmental dysplasia of the hip (DDH) went undiagnosed until it was too late to treat it conservatively, resulting in long-term complications. The Claimant was investigated for possible abdominal pathologies in the days following his birth; x-rays showed at least part of the pelvis and hips, and it was common ground that these showed evidence of DDH. Following trial on breach, the Judge found for the Claimant (*KJY v University College Hospital NHS FT* [2023] EWHC 2719 (KB)). The Defendant has since admitted causation.

Public Law & Human Rights



Supreme Court Ruling on Asylum Seekers to Rwanda

In November, in a closely-watched and widely-reported case, the Supreme Court held that the government's scheme to remove asylum seekers to Rwanda was unlawful. The case hinged on the principle of "non-refoulement" – that a person seeking asylum should not be returned to their country of origin if doing so would put them at risk of harm. The Supreme Court

held that this principle is established under both UK and international law – not only under the European Convention on Human Rights. **Angus McCullough KC** led a team of counsel appearing pro bono for the United Nations High Commissioner for Refugees, who intervened in the case. **Neil Sheldon KC** and **Natasha Barnes** were instructed as counsel to the Home Secretary.

Afghanistan Relocation and Assistance Policy litigation

In November 2023, **Shaheen Rahman KC** was appointed as lead special advocate in a number of judicial review challenges brought by Leigh Day and Bhatt Murphy on behalf of Afghan citizens whose applications to come to the UK under the ARAP scheme have been refused. Relocation can be offered under the scheme to those who worked for or alongside the UK Government in Afghanistan and whose safety is now at risk because of that work.



Court of Appeal win for SSHD in citizenship fraud cases

Rajkiran Arhestey, instructed by the Treasury Solicitor, was led by Julia Smyth of Landmark Chambers in back-to-back hearings over three days in the Court of Appeal in June 2023, both of which concerned the Home Secretary's power to deprive individuals of their citizenship under the British Nationality Act 1981. At issue was whether the general principle that the power to deprive on grounds of conduciveness to the public good could only be reviewed on public law grounds, applied to decisions to deprive on the grounds of fraud. The Home Secretary was successful in both cases, and both appellants were refused permission to appeal by the Supreme Court.

"Stakeknife" interim report finds army agent inside IRA cost more lives than he saved

Oliver Sanders KC has acted for the independent "Operation Kenova" police investigation into Northern Ireland legacy cases since 2017. Its interim report into the activities of the agent codenamed "Stakeknife", who operated within the IRA's internal security unit during the Troubles, was published in March 2024. It finds that the security forces were frequently aware of imminent abductions and murders by the IRA of suspected agents and yet failed to protect those at risk, and that Stakeknife himself was involved in very serious and wholly unjustifiable criminality, including murder, and that his crimes as an agent likely resulted in more lives being lost than were saved. **Jasper Gold** also advised on the Maxwellisation of the interim report.

Shamima Begum

Angus McCullough KC continues to act as the Special Advocate (with Adam Straw KC of Doughty Street Chambers) for Shamima Begum. The Court of Appeal dismissed her appeal in a judgment in February 2024 and she is seeking to appeal to the Supreme Court.

Court of Appeal ruling on excluding Irish national from the UK

Natasha Barnes was instructed is a high-profile claim relating to the Secretary of State's decision to exclude an Irish national from the UK on the basis that she travelled to Syria to align with ISIS. The Court of Appeal allowed the Secretary of State's appeal, concluding that the exclusion decision was not discriminatory under Article 14 ECHR. The claimant has sought permission to appeal to the Supreme Court. Natasha was instructed by the Government Legal Department.

Immigration Detention Inquiry - Judicial Review

Neil Sheldon KC, leading **Amelia Williams**, was instructed in a complex case concerning whether the Home Secretary had failed to establish, promptly, an effective Article 3 ECHR compliant investigation into the conditions encountered by detainees at the Manston immigration centre between June-November 2022. The Home Secretary accepted that the Article 3 ECHR investigative duty

was engaged but he has commissioned the ICIBI to carry out an Article 3 compliant investigation. Neil and Amelia were instructed by GLD. **Angus McCullough KC** acted for one of the groups of Claimants.

ECHR rejects asylum claim

The European Court of Human Rights in December gave judgment in *HA v United Kingdom*, finding that the applicant's deportation to Lebanon would not violate Article 3. The applicant is a stateless person of Palestinian origin who was born and raised in a refugee camp in Lebanon. He left the camp in 2017 for the UK where he

requested asylum. He argued that he was at risk of harm if he refused attempts to recruit him to extremist armed groups in the camp. The UK courts accepted that such groups would attempt to recruit him, but found he had not shown that he was at any risk of harm if he refused. **David Manknell** acted for the UK.



Covid Inquiry Judicial Review

Natasha Barnes appeared for the Defendant in the hearing of the Cabinet Office's claim for judicial review against the Chair of the UK Covid-19 Inquiry. The Cabinet Office challenged the lawfulness of the Inquiry's Notice requiring it to provide unredacted copies of WhatsApp conversations between senior officials involved in the Government's Covid-19 response, along with notebooks belonging to Boris Johnson. The Cabinet Office argued, unsuccessfully, that the Inquiry has no power to issue the Notice as some of the documents sought are 'unambiguously irrelevant' to the Inquiry. Natasha is also instructed as junior counsel to the Inquiry.

Tax case turns on public law statutory construction arguments

Edward Waldegrave was instructed in a case concerning the availability of enhanced capital allowances in respect of very substantial expenditure on the acquisition of two data centres in an "enterprise zone". The case started in the Upper Tribunal in 2019 and reached the Supreme Court in January 2024 (a decision is awaited). A key issue has been whether the taxpayers had a legitimate

expectation that HMRC would allow relief on a particular basis. The UT determined this issue broadly in favour of the taxpayers. In the Supreme Court, however, the taxpayers argued on public law grounds that HMRC could not deploy various statutory construction arguments because the taxpayers had a legitimate expectation that these points would not be pursued.

Block on Special Forces memoir upheld

Oliver Sanders KC acted for the Ministry of Defence in *R (Craighead) v Defence Secretary* [2023] EWHC 2413 (Admin) - a claim for judicial review brought by a former member of the SAS against a decision to refuse him authority to publish a service-related memoir which contained the claimant's first-hand account of the 2019 al-Shabaab terror attack at the DusitD2 hotel complex in Nairobi. Like all



members of the special forces, he was required to seek authority before publishing, which the Ministry of Defence refused on national security grounds. This was the first time such a challenge has proceeded. The claimant's challenge under article 10 ECHR was dismissed.

Challenge to Windrush compensation scheme dismissed

David Manknell KC acted for the Adjudicator in this Judicial review claim, which was the first challenge brought against the operation of the Home Office's Windrush Compensation Scheme. The Scheme was established to provide compensation to members of the Windrush generation who had been denied their lawful immigration status as a result of Home

Office policies and practices. The Claimant sought to challenge the limited awards made to her by the Home Office under the scheme. The Court accepted submissions in respect of the Adjudicator's independence and neutrality and indicated that it should not in general be necessary to include the Adjudicator in claims of this type.



Tax & Rating



VAT success in rare NHS case

Instructed by Colette van Zyl of KPMG, **Owain Thomas KC** appeared in one of the only cases challenging the scope of the relief from VAT for NHS bodies who contract out services. The decision of HMRC to deny recovery for a managed theatre service across the Trust's entire surgical estate was challenged by judicial review in a four-day hearing

before the Upper Tribunal. Owain successfully overturned HMRC's decision and obtained an order that the Trust was entitled to the VAT relief it sought. HMRC did not appeal. This case will have considerable ramifications for the scope of a valuable relief for public bodies including NHS Trusts.

Employee Benefit Trust Scheme – rewarding the individual?

Edward Waldegrave acted for HMRC in *M R Currell Limited v. HMRC* [2023] UKFTT 613 (TC), a case concerning a company which contributed £800,000 to an employee benefit trust (an "EBT") for its employees. The trustee of the EBT then lent the funds to one of the company's shareholders and

directors. The question was whether employment income tax and NIC charges arose as a result. The FTT agreed with HMRC that they did, on the basis (in summary) that the contribution to the EBT constituted a reward for the individual's work.

£15m Francovich damages claim fails

Amy Mannion has successfully represented HMRC in long-running litigation which eventually reached the Supreme Court in November 2023. The case was brought by a Jersey-registered company that grows horticultural products and sells them to UK customers by mail order, and sought Francovich damages from His Majesty's Treasury following the removal in 2012 of VAT relief known as Low Value Consignment Relief ("LVCR") by Section 199(3) of the Finance Act. Losses were claimed in excess of £15 million. The Supreme Court unanimously dismissed JCL's appeal against the Court of Appeal's upholding of the decision to strike out the claim, finding that it had no reasonable grounds.



Upper Tribunal addresses question of marketing expenditure

Isabel McArdle, acting for HMRC, appeared in this Tribunal appeal concerning attribution of marketing costs, and proposed partial exemption special methods, in the context of a business making both VAT exempt equity release supplies and taxable estate planning supplies. The Tribunal dismissed the appeal and accepted HMRC's position, that there was a direct and immediate link between marketing inputs and exempt equity release supplies, not the wider business, in relation to marketing which only referred to equity release products. Whilst the Tribunal accepted that general advertising expenditure would make it difficult to establish a direct link with a particular product and/or service, the same cannot be said where the expenditure relates to a prominent (or hero) product or service.



Soho's largest casino in VAT appeal

Matthew Donmall appeared successfully on behalf of HMRC in a VAT appeal before the Upper Tribunal about partial exemption. The taxpayer, Hippodrome Casino Ltd, sought to apportion residual input VAT between its exempt gaming business and its taxable catering and theatre operations by reference to the floorspace occupied by gaming on the one hand, and bars, restaurant and theatre on the other. The Upper Tribunal agreed with HMRC that this was fundamentally flawed because it wrongly assumed that the areas allocated to 'bars', 'restaurant' and 'entertainment' were *only* used for the purposes of taxable supplies of hospitality and entertainment. In fact these areas were also used economically as important amenities for HCL's exempt gaming business.

Freemasonry in the Upper Tribunal

Owain Thomas KC acted for United Grand Lodge in an appeal before the Upper Tribunal against a ruling that it does not qualify for an exemption from VAT for its membership fees. The First Tier Tribunal refused the appeal, leaving United Grand Lodge to appeal to the Upper Tribunal. The case explored the meaning of the exemption from VAT for philosophical organisations, and it is the first case of its kind to consider this provision. Owain was instructed by Colette van Zyl of KPMG.



Legitimate expectation JR against HMRC fails

A taxpayer judicial review was dismissed in *R (Realreed Ltd) v HMRC*. It was argued that the taxpayer had a legitimate expectation that it could treat its supplies as exempt supplies of residential accommodation, as HMRC had not questioned that

treatment in a series of meetings, the last being in 2005. Mr Justice Lavender found that "none of the Defendants' officers in any of the inspections carried out a critical examination of the proposition that the Relevant Supplies were exempt from

VAT. However, it is perhaps more significant that the Defendants did not tell the Claimant that they had done so". Thus no legitimate expectation had been created, nor had there been detrimental reliance. **Isabel McArdle** acted for HMRC.

Defending a legitimate expectation appeal

In July, the Upper Tribunal issued its judgment in the case of *Caerdav v HMRC*, rejecting an aviation repair and maintenance company's appeal against a finding that it owed over £330,000 in customs duty and VAT.

Jim Duffy was instructed by Heather Wong to represent HMRC before both the First-tier and Upper Tribunals. The case provides a useful analysis of several important aspects of law and procedure.



Customs classification appeal

Gideon Barth successfully represented HMRC before the FTT and the Upper Tribunal in a case concerning the proper customs classification of plywood panels used for concrete construction ('shuttering'). Allowing HMRC's appeal, the UT gave helpful guidance on the correct approach to customs classification in accordance with the GIRs and Build-A-Bear

Workshop, and the use of EC Classification Regulations in interpreting and applying the CN and the Harmonised System Explanatory Notes (HSEs). Gideon successfully argued that the FTT had failed to properly apply the HSEs, in particular, that the wording of the HSEN indicated that the objective characteristics did not reveal the panels' intended use as shuttering.

Tribunal addresses valuation of shares for tax purposes

Edward Waldegrave acted for HMRC, together with **Gareth Rhys**, in *Chisnall and Others v. HMRC* [2023] UKFTT 857 TC. The taxpayers made gifts to charities of shares in two companies which were listed on the Alternative Investment Market. The central question concerned how the shares should be valued for the purposes of the tax relief which the taxpayers claimed. The case also involved procedural questions. These arose from an application made by the taxpayers for the Tribunal to bar HMRC from participating in the proceedings due to long delays which had occurred during the enquiry process.



Feature Article

Artificial Intelligence: New Frontiers in Clinical Negligence



Robert Kellar KC

AI is already being developed to predict cancer from mammograms, to monitor skin moles for signs of disease and to perform invasive surgery autonomously. The disruption of medical practise by AI will also affect the practise of medical law. Some possible implications for clinical negligence litigation are discussed below.

The Duty of Care

At what point will healthcare providers have a positive duty to use AI? It may be argued in future that the advantages of using AI solutions are so stark that it is irresponsible, or even illogical, not to use them.

From the perspective of healthcare defendants, the imposition of a positive duty might well raise resourcing issues. New technology can be expensive. Difficult judgments will need to be made about the allocation of limited budgets to maximum advantage. It may be argued that decisions about where to allocate scarce resources are not justiciable.

The Standard of Care

What happens if, for example, an AI system makes recommendations that would not be supported by a responsible body of practitioners? At first blush the answer looks simple: guidance from a computer is not a substitute for the exercise of clinical judgment. A doctor should always make decisions that accord with a 'responsible body' of practitioners.

However, early adopters might argue that the very purpose of AI is to expose flaws in conventional medical wisdom. For example, by analysing big data, AI might identify concerning patterns in breast imaging that most radiologists would not consider anomalous. Or it might identify drug combinations for cancer that leading oncologists would consider to be counter intuitive.

One could argue that it would be wrong to deprive patients of the benefits of such insights. Perhaps the answer lies in informed consent: patients should be given the

right to choose whether to accept virtual or corporeal advice.

Liability of Individual Doctors

Should healthcare practitioners be liable where treatment assisted by AI goes wrong? On a conventional analysis, the answer to that question looks straightforward. AI could be viewed as just another technological tool used by doctors to deliver treatment. Or one might draw an analogy with a consultant that is supervising a junior doctor. However, such analogies may not be appropriate.

First, AI enabled systems could provide treatment wholly autonomously. For example, a team at John Hopkins University has developed a robot that has performed laparoscopic surgery on the tissue of a pig without the guiding hand of a human: the Smart Tissue Autonomous Robot (STAR).

Second, there is the "black box" problem. We see the input and output but what happens inside can be a mystery. It may be impossible for a human to understand in real time why an AI system is making any particular decision or recommendation. This may be due to the amount and complexity of the data that is being processed, the speed of processing or the fact that AI does not use natural human language.

Accordingly, the courts might well conclude that it is unfair to make individual healthcare practitioners responsible for the real time operation of AI. The use of AI may be considered more analogous to making a referral to a specialist than to overseeing a junior doctor.

Liability of Healthcare Institutions

If individual practitioners are not responsible, the courts may look to healthcare institutions. There could be different ways to establish liability. The law could impose conventional duties of care to ensure that "equipment" is functioning properly. Such duties might include duties of audit, testing and maintenance in line with the standards imposed by manufacturers or regulatory bodies.

Alternatively, Parliament might consider it necessary to impose some form of strict liability on healthcare providers. This is because reliance upon pure fault-based liability places an unreasonable burden upon claimants. Where matters go wrong the "black box" problem makes it very difficult for a claimant to pinpoint how an error has arisen and who (if anybody) might be responsible for it.

The Practice of Clinical Negligence

If strict liability is not imposed, the need to establish fault will surely disrupt the way in which lawyers litigate clinical negligence claims. Errors could arise from conduct by a wide range of actors for a wide variety of reasons. Those responsible for mishaps might include: software developers, data inputters, manufacturers, maintenance engineers and clinical technicians. The requirements for disclosure and expert evidence in such claims would bear little resemblance to that required in a conventional clinical negligence claim.

Such claims are also likely to require solicitors, barristers, and judges with new kinds of expertise. As AI forges new frontiers in healthcare, it is also likely to reshape the contours of clinical negligence law. Like the medical profession, the legal profession and judiciary will need to prepare and adapt.

Robert's areas of specialism include Clinical Negligence, Professional Discipline and Regulation, Healthcare, Public Law and Personal Injury. Robert also speaks and publishes in the emerging areas of AI, web3 and crypto regulation.

**This article is based upon an article published in Counsel magazine on 15 January 2024.*

Public Inquiries & Inquests



1COR instructed in recent major Inquests & Public Inquiries

Thirlwall Inquiry

- Peter Skelton KC
- Neil Sheldon KC
- Andrew Kennedy KC
- Shahram Sharghy
- Leanne Woods
- Thomas Hayes
- Nicholas Jones

COVID Inquiry

- Richard Booth KC
- Owain Thomas KC
- Jeremy Hyam KC
- Peter Skelton KC
- Shaheen Rahman KC
- Sarah Lambert KC
- Sarabjit Singh KC
- Neil Sheldon KC
- Shahram Sharghy
- Suzanne Lambert
- Amy Mannion
- Richard Mumford
- Leanne Woods
- Matthew Hill
- Alasdair Henderson
- Natasha Barnes
- Lois Williams
- Emma-Louise Fenelon
- Jo Moore
- Jonathan Metzger
- Amelia Williams
- David Reader
- Darragh Coffey

- Thomas Beamont
- Lucy McCann
- Thomas Hayes
- Gareth Rhys
- Nicholas Jones
- Christian Howells (Associate Member)

Horizon Post Office IT Inquiry

- Neil Sheldon KC
- Matthew Hill
- Alasdair Henderson
- Jasper Gold

Reading Terror Attack Inquests

- Peter Skelton KC
- Neil Sheldon KC
- Matthew Hill

Undercover Policing Inquiry

- Oliver Sanders KC
- Angus McCullough KC
- Peter Skelton KC
- Neil Sheldon KC
- Amy Mannion
- Jonathan Metzger
- David Reader
- Darragh Coffey

David Fuller Inquiry

- Shahram Sharghy

Dawn Sturgess Inquiry

- Gideon Barth

Grenfell Tower Inquiry

- Neil Sheldon KC
- David Manknell KC
- Rajkiran Arhestey
- Thomas Beamont

Streatham Attack Inquest

- Neil Sheldon KC

Emiliano Sala Inquest

- David Manknell KC
- Christian Howells (Associate Member)

Sheku Bayoh Public Inquiry

- Suzanne Lambert

Shoreham Air Crash Inquests

- David Manknell KC

Infected Blood Inquiry

- Jeremy Hyam KC
- Peter Skelton KC
- Shaheen Rahman KC
- Neil Sheldon KC
- Andrew Kennedy KC
- David Manknell KC

- Leanne Woods
- Michael Paulin
- Matthew Hill
- Emma-Louise Fenelon
- David Reader
- Christian Howells (Associate Member)

Molly Russell Inquest

- Oliver Sanders KC
- Jessica Elliott

Steven Dymond Inquest

- Neil Sheldon KC

Croydon Tram Crash Inquests

- Peter Skelton KC
- David Manknell KC

Jalal Uddin Inquiry

- Alasdair Henderson

Leicester City King Power Stadium Inquest

- David Manknell KC

Ian Paterson Inquests

- Neil Sheldon KC
- Gideon Barth



Reading terror attack Inquest

Peter Skelton KC and Matthew Hill represented the families of James Furlong, Joseph Ritchie-Bennett and David Wails at the inquests into their deaths. The three men were murdered in a terrorist attack in Forbury Gardens, Reading, on 20 June 2020. The inquests considered issues including the way in which state bodies and other agencies managed the risk of violence associated with their murderer, who was released from prison shortly before their deaths. Peter and Matthew were instructed by Fiona Huddleston and Benjamin Burrows of Leigh Day. **Neil Sheldon KC** was leading counsel for the Home Secretary, instructed by Andrew Henderson of the Government Legal Department.

Emergency c-section in hospital foyer

Rory Badenoch, instructed by Nisha Sharma at Slater & Gordon, acted for the parents of Abigail Fowler Miller at the inquest into her death in January 2022. After opportunities to admit Abigail's mother to hospital were missed, she arrived by taxi having suffered a cardiac arrest. An emergency c-section was performed in the hospital foyer. Unfortunately, Abigail died two days later

as a consequence of severe hypoxic brain injury. Her mother survived following resuscitation and emergency surgery. The Coroner found failings in the antenatal management, the avoidance of which would have prevented Abigail's death. Following the inquest, Abigail's parents were interviewed on BBC Newsnight calling for a national public inquiry into the standards of care across the UK.

Fresh inquest into death of Jodey Whiting

The Court of Appeal have overturned a Divisional Court decision refusing a further inquest into the death of Jodey Whiting (*Dove v HM Assistant Coroner for Teesside and Hartlepool* [2023] EWCA Civ 289). Jodey's mother, Joy Dove, argued that a second inquest was required to examine the role of the abrupt cessation of DWP payments in Jodey's death in 2017. Accepting the Appellant's arguments, the Court concluded a fresh inquest was desirable to examine the question of whether the cessation of benefits was causally relevant in Jodey taking her own life. **Jeremy Hyam KC** was instructed by Merry Varney, partner at Leigh Day.



Undetected aneurysm in 19 year old

MG died aged only 19, as a result of a ruptured aortic aneurysm. A chest x-ray had shown some indication of a possible cardiac abnormality. Unfortunately, owing to a combination of IT issues and administrative oversight, the abnormality was not investigated and the aneurysm remained undetected. The Coroner found that had it been, lifestyle and safety netting advice would have been given and MG would have been sent for surgery. MG would not have died when he did. **Leanne Woods**, instructed by Tim Deeming at Tees Law, appeared for the family. **Richard Mumford**, instructed by Amber Banerjee at Kennedys Law LLP, appeared for the Hospital Trust.

Reporting restriction in East Kent maternal HSV deaths inquests

Clodagh Bradley KC was instructed by Claire Petts of Clyde & Co on behalf of East Kent Hospitals University NHS Foundation Trust in respect of two maternal deaths in 2018 from herpes sepsis. The mothers had their Caesarean sections performed at different hospitals, 6 weeks apart, involving the same locum obstetrician. The inquests were heard together; a central issue was whether either mother had been infected by the surgeon in common; the

Coroner concluded that there was no safe evidential basis to support this theory. Clodagh secured a reporting restriction order (RRO) preventing the naming of surgeon, following a contested hearing where the BBC and PA were represented. The High Court subsequently refused permission for the Claimant to bring judicial review proceedings challenging the inquest findings and RRO, accepting the arguments advanced on behalf of the Trust.

Vitamin K: Newborn's death contributed to by neglect

Jim Duffy represented the parents of William Morris-Pato, instructed by Samantha Critchley of Fieldfisher. William's mother Naomi had confirmed on several occasions that she wanted him to be provided with Vitamin K following his birth. His father, Alex, also asked a doctor whether it had been given and the doctor confirmed that it had been. Vitamin K contains clotting

factors and, if omitted, can lead to haemorrhagic bleeding in the early months of life. William did not receive Vitamin K yet an entry in his records erroneously indicated that he had done so. He died following intracranial bleeding, aged 7 weeks. William was otherwise entirely healthy. The Coroner found that his death had been contributed to by neglect.

Gosport scandal: High Court orders fresh inquests

A Divisional Court ordered that fresh inquests be held into the deaths of three elderly



patients who died at Gosport War Memorial Hospital in Hampshire in 1998. **Peter Skelton KC** and **Jim Duffy** represent a number of families whose loved ones died at the hospital, instructed by Emma Jones of Leigh Day. The High Court's decision follows years of campaigning by the victims' families, and came a month after Kent Police announced that they were interviewing 19 suspects in relation to the events at Gosport, which took place between 1988 and 2001.

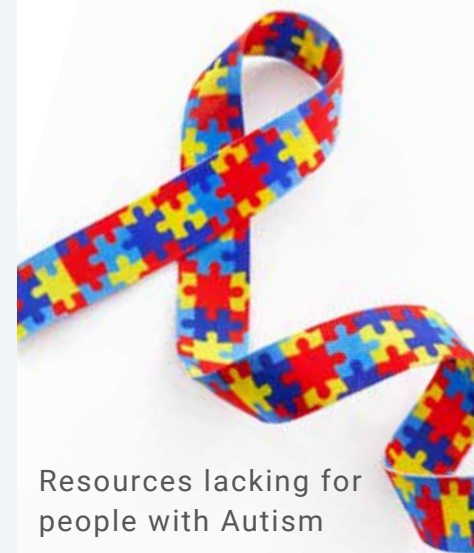
Young transgender adult failed by mental health services

Shahram Sharghy was instructed by Jenny Fraser of Fosters Solicitors in the tragic and preventable death of a young transgender adult who had spent most of his life in secure residential units

but was discharged without adequate planning into a temporary homeless shelter. He went on to self-harm which ultimately resulted in multi-organ failure, cardiac arrest, stroke and death.

Paterson Inquests

Richard Smith is representing a reconstructive surgeon who has been made an interested person in the inquests into the deaths of patients of the notorious breast surgeon Ian Paterson. The inquests will investigate whether there is a link between the operative technique and each patient's death, as well as a wide range of systemic issues. Currently over 50 inquests have been opened and all will be heard together. There is a large number of interested persons, including the Department of Health, the Trust at which NHS procedures were carried out, Spire, in whose private hospitals Paterson practised, as well as Paterson himself. The inquests are currently listed for 11 months to begin in October 2024. Richard is instructed by Sian Davies of Keoghs.



Resources lacking for people with Autism

Amelia Walker (representing East Sussex County Council) and **Martin Downs** (representing Brighton & Hove City Council), each instructed by in-house legal teams, participated in a 2-week jury inquest into the death of a young adult which heard evidence about the dearth of provision for people with autism. The Senior Coroner for West Sussex and the City of Brighton and Hove concluded: "Sadly this case yet again exposes the totally inadequate level of community provision for the care and treatment of those with suffering with Autism. This is a national problem and sadly leads to many experiencing unnecessary admission to inpatient facilities and also A&E attendances." A Report to Prevent Future Deaths was addressed to the Secretary of State for Health and Social Care.

Sally Poynton Inquest

Christopher Mellor was instructed to represent two GPs in the Inquest into the death of Sally Poynton, due to be heard before the Senior Coroner for Cornwall and the Isles of Scilly this year. In June 2021 Sally Poynton died following being attacked with a knife by one of her sons,

Jacob Poynton-Whiting, in Crowlas, Penzance. Jacob, who was 22 at the time, was subsequently convicted of her manslaughter on the grounds of diminished responsibility, and detained in a mental health facility. Christopher was instructed by Mohammad Shahid and Anna Lyp of MPS.



Marine Accident Judicial Review

Paul Reynolds successfully represented the Marine Accident Investigation Branch in judicial review proceedings (*R (Mid and West Wales Fire & Rescue Service) v HM Acting Senior Coroner for Pembrokeshire and Carmarthenshire* [2023] EWHC 1669 (Admin)). The case arose out of an inquest into the death of a fire officer while on duty. The MAIB's report, relied on by the Coroner, found the accident had been caused by shortcomings of the Fire Service. At judicial review Mr Justice Eyre rejected all of the Fire Service's criticisms of the report and ruled that MAIB was the expert body to which the Coroner was right to defer, that its report was unimpeachable, and that the process was fair. Paul was instructed by Lee Dianda from the Department for Transport and Sophia Khan from the Government Legal Department.



Inquest into death of a young mother

Thomas Beamont represented the family of a young mother who died in September 2020 following the misplacement of an endo-tracheal tube. The Royal College of Anaesthetists publicised the risks associated with a lack of a 'check' carbon dioxide trace in their campaign 'No Trace = Wrong

Place' in 2019. HM Assistant Coroner Graham Danbury found that the significance of the lack of trace was not appreciated or acted upon by clinicians for an extended period of time and returned a narrative conclusion. Tom was instructed by Emma Kendall of Fieldfisher.

Hospital falls death

Marcus Coates-Walker acted for the family of a woman who died following two falls in hospital, leading to an intracranial bleed. The inquest explored complex issues around the medical cause of death, the assessment and management of the deceased's risk of falls during her admission, and whether a Prevention of Future Deaths Report should be issued. The Coroner found that the falls were causative of death and that there were widescale failures in the assessment and management of the patient's risk of falls which contributed to her death. Marcus was instructed by Ali Cloak of RWK Goodman.



Complications following weight loss surgery

Alice Kuzmenko, instructed by Jenny Hughes of Themis Clinical Defence, represented a bariatric surgeon in the inquest touching upon the death of actor Philip Morris. Mr Morris developed acute renal failure following weight-loss surgery. Returning a narrative conclusion, the Senior Coroner found that death occurred following complications of an emergency procedure carried out in turn to treat complications post bariatric surgery.

Pulmonary embolism avoidable

Rajkiran Barhey, instructed by Meg George of Leigh Day, appeared for the family in the inquest into the death of a lady who died from a pulmonary embolism at the age of 56 in June 2022. The deceased suffered from heavy menstrual bleeding and was diagnosed with uterine fibroids. The Coroner for East London found that owing to a breakdown in communication, surgery did not take place which, had it done, would have avoided the pulmonary embolism. The Coroner also made a Prevention of Future Deaths Report, sent to the NHS Trust, NHS England and the Secretary of State for Health and Social Care, relating to the failure to follow up CN's surgery, and the failure to identify risk factors for the occurrence of a thrombotic event.

Building relationships

Jasper Gold and **Lance Baynham** both completed secondments in the Advisory team at Capsticks Solicitors, representing NHS Trusts in a wide variety of inquest proceedings. They gained experience of appearing at pre-inquest review and final hearings, including complex multi-day cases. Jasper got to know Woking Coroners Court sufficiently well to be offered a loyalty card by a kindly member of the team – and also found time to assist on a number of judicial review and data protection cases. Lance was with Capsticks from January to mid-April 2024. In addition to inquests, he also assisted with some data protection and judicial review matters, and additionally undertook some Court of Protection work – advising Trusts on cases involving the Mental Health Act 1983 and Mental Capacity Act 2005 and appearing in the Court of Protection.



Regulatory & Employment Law



Rider exonerated before horseracing body

Richard Booth KC, instructed by Adam Flacks and Teona Phatsatsia of LK Law via a pro bono referral from Sport Resolutions, represented a work rider charged with a betting offence before the Judicial Panel of the British

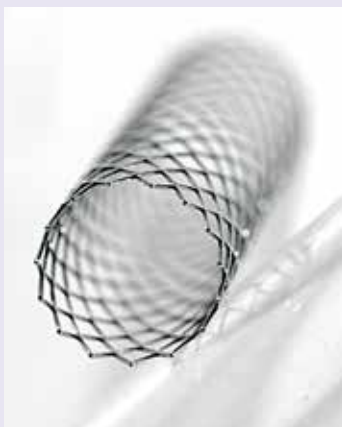
Horseracing Authority (BHA). Following Richard's cross-examination of a successful racehorse trainer, and after hearing evidence from the work rider, the Judicial Panel found that the charge had not been proved.

High profile aesthetics doctor avoids interim order

Clodagh Bradley KC was instructed by Shannett Thompson of Kingsley Napley to act on behalf of a high-profile aesthetics doctor arrested on suspicion of rape, theft, fraud, possession of a Class A and supplying class C drugs where the allegations were raised by his estranged wife when divorce proceedings were intimated. Clodagh persuaded the IOT not to impose an interim order pending further police investigations.

Doctor defended on serious charges

Owain Thomas KC acted for a doctor in a 5 week MPTS hearing, successfully contesting a finding of impairment in a case alleging dishonesty, perjury and clinical incompetence leading to the death of two patients and harm to two more. The case involved complex interventional cardiology procedures which seek to address/repair coronary artery disease from within the vessels by deploying coils/stents to keep the vessels open and working. The client was acquitted of all serious allegations save for those he admitted. Owain was instructed by Alex Leslie and Gareth Gibson of Weightmans.



Dentist successful on CPD appeal

Matthew Barnes represented a dentist before the Registration Appeals Committee following an erasure decision for failure to undertake the necessary continuing professional development (CPD) over a two year period. The appeal required analysis of the extent to which there is a discretion

in CPD cases under the Dentists Act 1984 and how that discretion should be applied. The Registration Appeals Committee accepted that there is a discretion and exercised it in the claimant's favour, allowing the appeal. Matthew was instructed by Liz Nicholson of MDU.

GP cleared of multiple counts of dishonesty

Allegations of dishonesty against a GP were dismissed after a two and a half week hearing before the Medical Practitioners' Tribunal ('MPT'). The allegations against the GP included that he had, on 20 separate occasions over a 5 month period, worked at 2 different out of hours providers at the same time. The MPT went on to find the doctor's fitness to practise was not impaired and no warning was given to the doctor. **Leanne Woods** was instructed by Lucy Yates at the MDDUS.



Flexible working in the public sector

Post-pandemic, issues of flexible working, remote working and working from home have become a major topic for all employers. **Alasdair Henderson** has been involved in several cases

this year concerning the extent to which public sector employees can be required to attend the office and whether they should be allowed to work remotely from overseas on a long-term basis.

Gender critical belief and discrimination

Jim Duffy acted for a government department in a claim of discrimination on the grounds of a protected belief. In the comments section of an intranet article celebrating the department's association with an NGO, an employee expressed criticism of the article based on her gender critical belief, namely that sex is observed and recorded and is immutable. The claimant's comments were flagged by another employee as inappropriate or offensive and were automatically removed. All comments on the article were then disabled. Jim was instructed by Stephanie Lee of the Government Legal Department.



Exam scam cleaned up

Emma-Louise Fenelon and **Alice Kuzmenko** are case presenters on behalf of the Nursing and Midwifery Council in a group of cases arising out of suspected fraudulent exam results undertaken at the Yunnik Technologies Test Centre, Ibadan, Nigeria. Emma and Alice form part of a team of barristers undertaking such cases against 48 NMC Registrants.

Clarifying the NHS/private divide in dentistry

Robert Kellar KC represented a dentist in the High Court and Court of Appeal challenging her erasure from the dental register for charging private “top up” fees for NHS treatment, specifically ‘all ceramic’ crowns not typically available under the NHS. Initially deemed dishonest and in violation of dental regulations for mixing NHS and private funds on the same treatment, her erasure was contested. The High Court overturned the dishonesty findings, replacing erasure with a 9-month suspension. The Court of Appeal upheld the High Court’s finding and affirmed that she had not been dishonest. It also affirmed that charging private “top up” fees for enhanced NHS services was not lawful. Robert was instructed by Tania Francis at Hempsons.



Dentist regains unconditional registration

Richard Mumford was instructed by Richard Creamer and Lily-Rose Lloyd of Gordons Partnership in long-running GDC proceedings. The dentist Registrant was found to have behaved dishonestly in relation to the investigation of a patient complaint by NHS England.

Richard persuaded the FTP committee that a sanction of erasure was not warranted and a suspension of 9 months was imposed instead. The dentist was subsequently returned to unconditional registration at the second review hearing.



Personal Injury & Abuse Law

Local Authority abuse liability goes to the Supreme Court



Elizabeth-Anne Gumbel KC, leading **Justin Levinson**, appeared on behalf of the Claimants in *HXA v Surrey County Council*, *YXA v Wolverhampton City Council* [2023] UKSC 52. These were two significant appeals concerning whether or not local authority social services

departments owed a duty of care to vulnerable children in the community who suffered avoidable abuse within their family. Lizanne and Justin were instructed by Lesley Batrick of Scott Moncrief & Associates in the case of HXA, and Abbie Hickson of Bolt Burdon Kemp for YXA.

Settlements achieved in Ashdown House group litigation

Iain O'Donnell acted for the Claimant in this group action brought against the Ashdown House School for sexual assaults by multiple teachers at the school (one of whom faced extradition from South Africa) before it was closed down. All of the claims brought within the group were settled in 2023. Iain was instructed by Richard Scorer of Slater & Gordon.

School's vicarious liability for a work-experience student – is grooming actionable in tort?

Justin Levinson appeared in *MXX v A Secondary School* [2023] EWCA Civ 996, which concerned whether or not a school was vicariously liable for sexual abuse perpetrated by a former pupil who was doing a one-week work experience placement within the PE department when he groomed and sexually assaulted a younger female pupil. The Court of Appeal determined that the abuser's status as a work experience student made him akin to an employee, but that the abuse was insufficiently closely connected to his work at the school. Significantly, however, the court also concluded that his grooming was, without more, actionable as the tort of intentional infliction of harm. **Justin Levinson** was instructed by David McClenaghan of Bolt Burdon Kemp.

Rare example of success in resiling from an admission of liability

Dominic Ruck Keene is representing the Ministry of Defence (MOD) in a high value personal injury claim arising from an alleged failure to provide appropriate hearing protection, as well as psychiatric injury caused by initiation rituals, bullying and harassment. Liability had been admitted prior to issue by the MOD's claims handlers, but Dominic successfully applied to resile from the admission

under CPR 14.5, with costs in the case. Successful applications under CPR 14.5 are relatively rare, particularly where the application arises solely out of counsel's reassessment of the existing evidence, rather any new evidence coming to light. The claim continues, with trial in 2025. Dominic is instructed by Jacqueline McSwiggan of the Government Legal Department.

Settlement secured for victims of Beirut Port Explosion

Emma-Louise Fenelon and **Thomas Beamont**, instructed by Abdul Azeem of Dechert LLP, acted for victims of the Beirut Port explosion in an assessment hearing, following which the High Court made an award of over £850,000 in damages. On 4 August 2020, 2,750 tonnes of ammonium nitrate stored in the port of Beirut exploded, resulting in

one of the largest non-nuclear explosions in history. The explosion killed over 200 people, injured over 6000, and devastated the surrounding area, creating a 140-metre-crater in the port. It destroyed whole parts of the city of Beirut, internally displacing 300,000 people. Emma-Louise and Tom were led by Neil Hart KC, along with Akash Sonecha, both of Essex Court Chambers. **David Hart KC** was involved at an early stage in proceedings.

Vicarious liability for sexual abuse in a monastic community – identifying the defendant

Iain O'Donnell acted for the Claimant in *JXH v The Vicar, PCC and Churchwardens of the Parish of Holcombe Rogus* [2023] EWHC 3221, a sexual assault claim brought by the Defendant's priest when the Claimant was involved in a monastic community set up by his abuser. The claim addressed issues in both stages of the test for vicarious liability in great detail, and also addressed the nature and proper identity of religious defendants. The case is of substantial legal significance to vicarious liability generally and in claims against religious institutions specifically. Iain was instructed by Richard Scorer of Slater & Gordon.



Liability established against multiple contractors



Shahram Sharghy was instructed by Lewis Ayre of Fieldfisher in complex multi-defendant construction site claim involving a catastrophic lower limb injury. Each defendant denied liability and blamed the others for responsibility. The case involved substantial work to consider the voluminous disclosure

provided by each defendant to demonstrate responsibility for each defendant for the events leading to the accident. The defendants sought ADR days before a week-long liability trial was due to begin, and settled the claimant's claim in totality at full value and agreed responsibility between each of them.



Seven-figure settlement for pedestrian hit when crossing the road

Robert Kellar KC, instructed by Hema Rana of Irwin Mitchell, acted for a Claimant who sustained a severe traumatic brain injury in a road traffic accident. The Claimant had been attempting to cross a main road late at night when he was hit by the Defendant's vehicle. Accident reconstruction experts were required on both sides to determine whether the defendant driver was speeding. There was also a serious issue in respect of contributory negligence: the claimant did not use a pedestrian crossing, had (allegedly) been drinking alcohol and had failed to notice the defendant's vehicle approaching. The claim was settled at a round table meeting in 2023 for a sizable seven figure lump sum.

Risky not to undertake risk assessment

The Claimant was volunteering at a foodbank distribution centre when she tripped and fell over a raised threshold, suffering a wrist fracture, facial injuries, shock, anxiety, and posterior vitreous detachment affecting her vision. The Judge determined that the Defendant was negligent in failing to undertake a sufficient risk assessment, which meant

that simple and inexpensive actions were not taken to minimise the tripping risk. The Judge found no contributory negligence on the part of the Claimant. The Claimant's damages were significantly increased as a consequence of beating two Part 36 offers made leading up to trial. **Lucy McCann** was instructed by Anthony Pownall from Bonallack & Bishop Solicitors.

Settlement secured in food poisoning claim

Darragh Coffey acted for a senior executive who suffered severe food poisoning and went on to develop Guillain Barré syndrome, a rare and debilitating neurological disorder, following a meal at an awards dinner. This had a significant impact on the Claimant's life and career

progression. Darragh assisted the Claimant in obtaining a significant settlement award from the Defendant, which reflected these impacts including loss of earnings. Darragh was instructed by Michelle Victor and Andrew Jackson of Leigh Day.

All cases successfully settled in the Sherbourne Prep School group action

Iain O'Donnell acted for the Claimants in the group action brought against the estate of Robert Lindsey (deceased) for sexual assaults perpetrated by Lindsay when he was the owner and headteacher at Sherbourne Preparatory School. All of the claims brought within the group were settled in 2023. Iain was instructed by Charles Derham of Remedy Law.

Aggravated damages secured for victim of Doctor's covert clinic recordings

Iain O'Donnell acted for the Claimant in *AXB v Metwally* [2023] EWHC 2470, a successful claim for damages resulting from the covert recording and retention of intimate personal video footage of various medical examinations conducted by the Defendant at his pain clinic. The pleaded cause of action was the misuse of private information. Unusually, the court was persuaded to include a modest award for aggravated damages resulting from the fact that the intimate footage was obtained in gross breach of the position of trust held by the Defendant as the Claimant's doctor at the time. Iain was instructed by Richard Scorer of Slater & Gordon.

Environmental Law

Rajkiran Arhestey and Lucy McCann win pro bono planning appeal

Rajkiran Arhestey and **Lucy McCann** appeared successfully, pro bono, on behalf of The Isleworth Society at a five-day planning inquiry examining a proposal to build 80 flats on a site which has been used as allotments for over 100 years in West London. The Planning Inspector dismissed the appeal brought by the landowner, Northumberland Estates, run by the Duke of Northumberland. The Inspector



found that the proposal constituted an unacceptable loss of local open space. He also went further than a previous appeal decision concerning the site, to find that the proposal would also

harm heritage assets, an issue which was only raised by the Isleworth Society. Kiran and Lucy were instructed by Emma Montlake at the Environmental Law Foundation.

Chicken guts and fragrant fungi

Alasdair Henderson is currently instructed by the environmental team at Hugh James in two group actions. One concerns odour nuisance from a mushroom composting site in Doncaster, and has involved a preliminary hearing about the interpretation of a previous settlement agreement. The other relates to smells of rotting carcasses allegedly caused by a poultry processing plant in Preston.

To dust thou shalt return

David Hart KC and **Alasdair Henderson** are representing a large group of claimants in the town of Chirk in their nuisance claims arising from dust produced by a major wood processing factory, instructed by the environmental team at Hugh James. After various twists and turns the case is listed for a five week trial in April-May 2025.



David Hart KC remains recognised as a leader for Environmental Law

David Hart KC continues to be recommended by all legal directories, including Who's Who Legal, Legal 500, and Chambers & Partners, as a leading silk for Environmental Law, and draws praise for being "*very knowledgeable*" and "*a resourceful statesman*". His recent work includes being instructed by Hugh James in relation to two group action nuisance claims, one concerning a wood processing plant and, the other, a steelworks. **Alasdair Henderson** is also instructed

in the former, again by Hugh James. David has also been instructed by Weightmans in relation to a major landslip affecting an A-road in Kent, and has appeared in a series of appeals by the Canal and River Trust in respect of water abstraction licences, instructed by Burges Salmon. He has also been advising Fish Legal on various issues concerning the River Trent and the River Wye.

David has over 30 years' experience in this field, and

his practice encompasses the full range of issues, including regulatory, litigious, planning and transactional work. He has advised on end-of-waste issues for over 20 years, and has appeared in three of the leading cases involving challenges to decisions by the Environment Agency.



An Englishman's home is his castle (but does it need a moat?)

Alasdair Henderson recently advised a group of claimants who had bought new houses built by Keepmoat Homes in Manchester on how to seek redress for the flooding they had experienced, including

consideration of possible causes of action in nuisance, negligence, contract or breach of the National House Building Council Regulations. Alasdair was instructed by CEL Solicitors.



A Tenant Abroad

Gareth Rhys instructed for the Government of St Helena, Ascension and Tristan da Cunha



For the first few months of 2024, **Gareth Rhys** was in the British Overseas Territory of St Helena, Ascension, and Tristan da Cunha, acting on behalf of the Attorney General in a number of constitutional, public, civil and commercial law matters. The highest-profile proceedings in which he is instructed are claims brought under the Constitution of St Helena in respect of a number of alleged human rights breaches arising out of prison conditions at HMP Jamestown. Gareth succeeded in a number of interlocutory hearings in these proceedings before the Chief Justice of St Helena, and the final hearing took place in July 2024. Gareth has also appeared in the Supreme Court of St Helena



on behalf of the government in an application for declaratory relief in respect of a large contractual dispute relating to an unsuccessful telecommunications infrastructure project. Gareth has also provided legal advice on behalf of the Attorney General to HE Governor Phillips, Chief Minister Thomas, and the Island's Executive Council on constitutional issues, other public law issues such as immigration claims, and the human rights impact of

proposed beneficial ownership legislation. He also deputised for the Attorney General in advising on the territory's Procurement Regulations at a meeting of the Procurement Board of the St Helena Government. Separately, during his time in the territory, Gareth was appointed as pro bono Standing Counsel to the St Helena National Trust, a charity dedicated to the preservation and promotion of the cultural, historical, and natural heritage of St Helena.

UK Human Rights Blog & Law Pod UK



Law Pod UK

Law Pod UK, 1 Crown Office Row's own podcast, has exceeded 850,000 listens this year and released its 200th episode! This year the presenting team of **Rosalind English**, **Emma-Louise Fenelon**, **Lucy McCann** and **Jim Duffy** covered wide-ranging subjects from the Supreme Court decision in *Paul*, "toxic torts", scope of duty since *Khan v Meadows*, and whether the police owe a duty to warn. LawPod UK marked International Women's Day by launching a three-part series on gender and the Bar involving interviews with a range of women associated with 1 Crown Office Row, including Sally Smith KC and Dame Philippa Whipple. Recently, the LawPod UK team welcomed Emma-Louise Fenelon back from maternity leave, and also a new producer, Alfie Thompson.

UK Human Rights Blog

Another year of dramatic human rights issues and litigation has left the UK Human Rights Blog with a panoply of issues to cover, spanning the range from front-page political issues such as the Rwanda deportation scheme to more esoteric and technical issues like the ambit of the right to life in inquests. This year, the blog has continued to benefit from the excellent contributions of guest authors from academia and practice covering human rights further afield, as well as our own contributors in chambers.



Meet the Editorial Team



Editor-in-Chief
Richard Mumford



Editor
Nicholas Jones



Editor
Lance Baynham

Events

Forthcoming:

'Controversial Quantum Issues in Catastrophic Claims'

10th October 2024

'Practical Issues in Judicial Review'

21st November 2024

Previous:

'Minority Report: Material Contribution or Genetics'

5th October 2023

'Coronial Conundrums'

9th November 2023

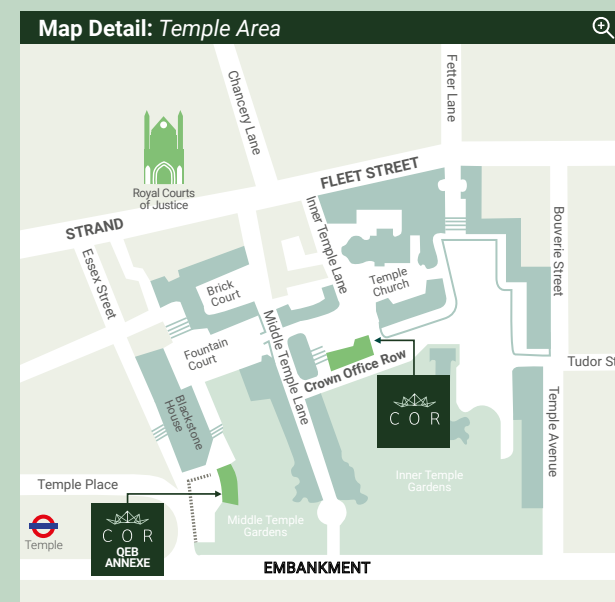
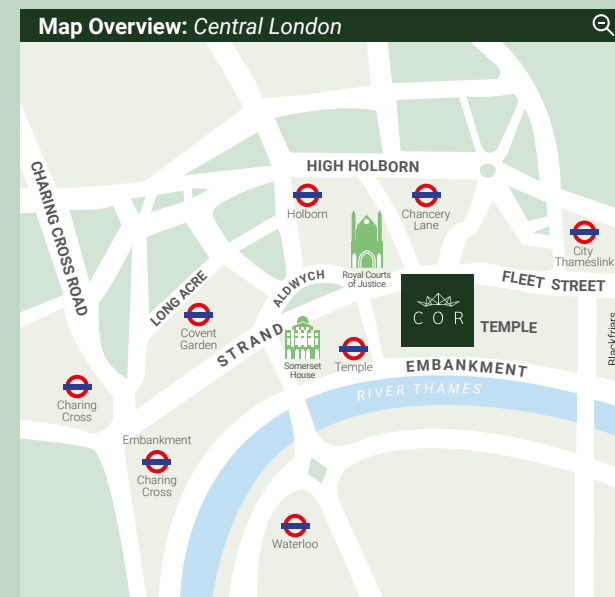
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