

Brian McCluggage

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AREAS OF EXPERTISE

Personal Injury, Insurance, Fraud, Clinical Negligence,
Property, Property Damage

JUDICIAL APPOINTMENTS

Employment Judge: 2010; Bar Disciplinary Tribunal (BTAS):
2017

Brian McCluggage conducts catastrophic personal injury work, predominantly in the interest of insurers. He accepts instructions in cases where the pleaded value is likely to be in excess of £500,000 and as sole counsel in cases valued at up to £15 million. Brian adopts a rigorous approach to evidential analysis and preparation (lay, expert and documentary) and enjoys working in a team with professional clients who share this philosophy. Instructions regularly involve:

- a. Liability disputes involving technical or scientific evidence.
- b. Brain injury, from contested minor TBI to the most serious of catastrophic injury involving Minimally Conscious State.
- c. Amputation, both upper and lower limb.
- d. Complex fatal cases, particularly those involving business interests and accountancy evidence.
- e. High value cases with the taint of fraud.

Recent cases of interest include:

JCA v. 1) CIC 2) MBD (2024): High Court, Manchester: settlement of brain injury/psychiatric case for £4.1m against Schedule of £14m as sole counsel against Silk & Junior. The primary issue in the case was the causation of a treatment-resistant severe schizophrenia – was it caused by brain injury or genetic & drug-related reasons? If brain injury related, what care regime was appropriate given dangerous and unpredictable behaviour of claimant?

Bennion v. Adventure Park Snowdonia Ltd [2023] EWHC 3334 (KB): 5-day High Court liability trial defending tragic tetraplegia case following a surfing accident in the UK's first artificial surfing lagoon.

ABS v. LS & Esure (2023): High Court, Birmingham: settlement of devastating case involving severe brain and orthopaedic injury against a background of congenital physical issues and alcoholism. C left with cognitive deficits, limited use of right arm and aggravation of significant pre-existing knee problems. Life expectancy in issue. Settled for PPO on capitalised value of £3m against Silk & Junior.

McD v. B (2023): County Court, Manchester: liability success at trial on running down accident on Deansgate causing significant brain injury to a drunken undergraduate. Issue of law on the 'counterfactual' construction of the reasonable driver – D's own PRT or the reasonable man's PRT?

Sugden v. Cumbria County Council (2022): success in Highways Act case defeating claim by a brain-injured cyclist riding into a pothole. Judgment has implications for inspection regimes of rural local authorities, giving greater latitude to local authorities on the frequency of B-road inspections.

H v. City of York Council (2022): amputation case settled at JSM against leading & junior counsel. Claim pitched at £4m, settled at under £2m.

BLA v. SAW (2022): This severe brain injury case involved a young woman who sought to reject excessive case management and rehabilitation foisted upon her by the Case Manager. The defendant was C's partner, giving rise to relationship stability issues and care need contingencies. Ethical issues over C solicitors approaching the insured without permission were litigated. The case settled for £2.25m.

Monks v. Connollys Scaffolding (2022): 5-day liability & quantum trial involving allegation of fraud in context of moderate brain injury and severe shoulder injury leading to loss of scaffolding occupation. £700,000 claim reduced to £3,500.

Re F (2022): £14m brain damage/psychiatric injury claim settled after JSM at £3m

Forsyth v. Carnforth Hotel (2021): successful defence of occupational liability case after C fell out of hotel window sustaining serious lower limb injuries. Novus Actus and Volenti defences succeeded. Successfully distinguished *James v. White Lion Hotel (2020) CA*.

Re H (2021): serious brain injury case settled at £6m through Periodical Payment Order

Blake v. Croasdale [2019] RTR 73: successful defence of £4m brain damage claim on basis of ex turpi causa brought by Leeds drug dealer

Tuson v. Murphy [2018] EWCA Civ 461 (Court of Appeal): leading case on interaction between CPR Part 36 and exaggerated claims

Axa v. FCS [2018] EWCA Civ 1330 (Court of Appeal): leading case on exemplary damages in respect of road traffic fraud.

Shui v. University of Manchester [2018] ICR 77: Appeal Tribunal case principles setting out adjustments for litigants suffering mental illness

McHugh v. Okai-Koi [2017] EWHC 1346 (QBD): defending fatal case after road rage incident in London public house. Ex turpi causa, contributory negligence. C failed to beat Part 36 after 4 day High Court trial

Blake v. 1) Croasdale 2) Esure [2017] EWHC 1336 (QBD): a leading case on resiling from admissions

Select Car Rentals v. Esure Services Limited [2017] EWHC 1434 (QBD): leading case on third party costs orders against credit hire companies

Hatfield v. 1) Drax & 2) SG Transport (2017): successful liability defence of truck accident leading to upper limb amputation

Brian is also a tenant at 9 St. John Street Chambers in Manchester.

Personal Injury

Brian has significant experience of cases involving:

- Complex liability disputes, including those involving technical evidence;
- Cases with allegations of malingering and exaggeration;
- Brain damage including subtle brain injury and disputes over organic/psychiatric causation of symptoms;
- Psychiatric injury claims including nervous shock/secondary victim claims, PTSD, Somatoform conditions, Obsessive Compulsive Disorder, Personality Disorder;
- Chronic pain cases including fibromyalgia, chronic fatigue syndrome;
- Fatal Accidents Act cases

Insurance

Brian is regularly instructed in policy disputes involving insurers and is familiar with the effect of the Consumer Insurance Act 2012, Consumer Rights Act 2015, Insurance Act 2015 and similar legislation. He has been involved in cases involving:

- Construction of policy terms including redrafting policies on behalf of insurers;
- Co-insurance disputes;
- Indemnity issues including late notification;
- Exaggerated claims including property claims;
- Misrepresentation and non-disclosure;
- RTA/MIB issues.

Fraud

RTA fraud previously comprised a major part of Brian's practice. He continues to accept instructions in 'special situation' cases and in particular:

- Claims in deceit and conspiracy, including seeking exemplary damages;
- Committal applications for contempt.

He has previously been involved in some of the biggest 'fraud ring' operations litigated on behalf of insurers including Operation Orion (*Direct Line v. Suleman & 43 ors* (2009) QBD) and Operation Koyna (2016).

Clinical Negligence

Brian's recent clinical negligence experience predominantly involves defending military clinical negligence claims on behalf of the MOD.

He has particular expertise in dealing with alleged missed PTSD diagnoses.

Property

Brian has experience of property damage disputes including those relating to:

- Damage to prestige or collectible vehicles. The highest value car litigated was worth some £1.3 million.
- Fire damage. Cases include a £1.2 million claim on a household policy for ignus suus where a spark from a garden bonfire destroyed a neighbouring warehouse and the Lancashire Business Park fire, where his client defended claims worth £30 million.
- Bailment cases.

Qualifications

MA (Cantab)

LL.M. (Toronto)

Middle Temple Harold G Fox Scholar