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Niall Maclean

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AREAS OF EXPERTISE

Personal Injury, Industrial Disease, Clinical Negligence, Fraud, Professional Negligence, Costs, Credit Hire, Insurance, Abuse, Product Liability, Inquests, Property

Niall is recognised as a leading junior in personal injury work in the current edition of Chambers & Partners, where he is described as “an impressive junior with a growing profile at the Personal Injury Bar” with “experience handling catastrophic and fatal injury claims on behalf of both defendants and claimants”, and in the current edition of the Legal 500 which notes that he “provides practical advice on complex problems”. He is also ranked as a leading junior (tier 1) in the current edition of the Legal 500 in Industrial Disease and in Insurance Fraud.

Niall specialises in high value and complex personal injury and clinical negligence work, acting for claimants and defendants. He frequently acts in cases valued in excess of £1m. He has a large and loyal client base, and receives instructions from leading solicitors, major insurers, the MIB, central government, and local authorities.

His practice focuses on:

- fatalities and injuries of the utmost severity;
- serious spinal damage, including tetraplegia;
- brain injury cases, including those characterised as subtle in nature;
- all forms of pain syndromes, including chronic pain syndrome, complex regional pain syndrome, fibromyalgia and somatoform disorders;
- complex orthopaedic and amputation cases;
- psychiatric conditions; and
- intentional torts including historic abuse.

Niall has an excellent track record at trials, joint settlement meetings and mediations.

He also has considerable appellate experience. He appeared in the Supreme Court (led) for the successful appellant in **Knauer v Ministry of Justice** [2016] UKSC 9, an important case on the quantification of future losses in fatal claims. He appeared in the Court of Appeal (unled) for the successful respondent in **Scott v Gavigan** [2016] All ER (D) 35 (Jun), a case concerning issues of foreseeability and legal causation in road traffic accidents.

Niall is a member of the Attorney General's C Panel of Junior Counsel to the Crown, a select group of barristers who undertake civil work on behalf of central government departments.

Niall usually acts unled, but he is also comfortable acting as part of a litigation team and is frequently led by prominent personal injury and clinical negligence silks. Whilst adopting a thorough and rigorous approach to cases, Niall prides himself on being practical and approachable.

Personal Injury

Niall has considerable experience and is highly skilled in all areas of personal injury work, including:

- road traffic (including RTA 1988 and MIB issues, and cases involving accident reconstruction evidence);
- the liabilities of employers and occupiers;
- highways claims;
- public liability;
- product liability;
- CICA claims; and
- inquests

He generally acts in high value (frequently £1m plus) and complex matters.

Niall is well-versed in the complex evidential and strategic issues that arise in claims involving traumatic brain injuries (including subtle TBI) and all forms of pain disorders.

Niall has considerable experience in cases involving allegations of exaggeration and malingering. He is knowledgeable in issues surrounding the use of surveillance evidence and in the tactical considerations that arise in these cases.

Niall's philosophy is to prepare cases with the utmost thoroughness. He prides himself on providing an objective appraisal of the strengths and weaknesses of any case at the earliest possible opportunity. Where settlement is appropriate, he is a skilful negotiator comfortable in formal mediations as well as joint settlement meetings. When matters go to trial, he is valued by instructing solicitors for his incisive cross-examinations and persuasive advocacy.

Recent examples of Niall's personal injury work include the following:

- Acted for the defendant in a subtle brain injury case with complex issues surrounding the quantification of a young academic's future loss of earnings. The claim settled at a JSM for a small fraction of its pleaded value.
- Acted for a claimant with serious psychiatric injuries and a complex loss of earnings claim based on the impact of his injuries on the performance of his large jointly owned company. The claim settled at a JSM for a high six-figure sum.
- Acted for the defendant in a complex regional pain syndrome case defended on the basis that an unrelated post-accident spinal injury was the true cause of any pain. Settled at a JSM for less than 20% of the claim's pleaded value.
- Acted for the claimant (led by Frank Burton QC) in a brain injury case giving rise to complex liability and causation disputes. The claim settled at a JSM for a seven-figure sum.
- Currently acting for the defendant in a traumatic brain injury case where causation is considerably complicated by a strong iatrogenic component to the claimant's symptoms.
- Acted for the defendant occupier in a fatal case where the deceased fell through the roof of the defendant's

warehouse. Niall drafted a detailed defence which led to the prompt discontinuance of the claim.

- Acted for a claimant with a serious shoulder injury impacting on his previously successful building business. The claim settled favourably at a JSM.
- Acted for the defendant in a chronic pain case where the claimant's complicated pre-accident psychological history suggested an exacerbation of pre-existing somatoform disorder. The claim settled favourably at a JSM for a small fraction of its pleaded value.
- Currently acting for defendants in two cases (led by Stephen Worthington QC in each) where quantum is considerably complicated by the claimants' pre-accident health conditions (tetraparesis in one case, severe learning difficulties in the other).
- Acted for the successful claimant involved in a multiple pile-up motorway collision. The trial lasted four days and was used as a test case to resolve liability for several serious injuries to passengers.
- Acted for the defendant (led by Paul Russell QC) in a very high value tetraplegia case with complicated life expectancy issues which settled favourably at a JSM for an eight-figure sum.

Industrial Disease

Niall is ranked as a leading junior (tier one) in Industrial Disease in the current edition of the Legal 500, which notes that "he has a formidable intellect, which he rigorously applies on behalf of mesothelioma sufferers". The current edition of Chambers and Partners additionally notes that that Niall is "recommended by sources for his exceptional experience with asbestos claims".

Niall has fought and won numerous asbestos exposure cases giving rise to difficult questions of liability (including allegations of "low exposure"), causation and quantum. He is in demand as a speaker and author on these topics, and he regularly lectures and writes articles for professional media. He has a particular interest in arguments surrounding breach of duty, and on the tactical and evidential issues surrounding claims for immunotherapy treatment.

Recent examples of Niall's asbestos work include the following:

- Currently acting for a number of living mesothelioma claimants seeking to recover the costs of immunotherapy treatment.
- Acted for the successful claimant in a fatal mesothelioma case involving an extension of the principles set out by the Supreme Court in **McDonald v Dept. for Communities and Local Government** [2014] UKSC 53.
- Currently acting for the claimant in a very high value fatal mesothelioma case where the deceased ran a number of successful companies in Canada and the USA.
- Currently acting for a claimant diagnosed with well-differentiated papillary mesothelioma, a highly unusual form of the disease (only around 100 cases ever recorded worldwide).
- Acted for the successful claimants in a number of cases giving rise to complex issues of *de facto* employment and the scope of duties owed by non-employers.
- Acted for the successful claimant in a case where the defendant employer argued it operated a nationwide blanket ban on the use of asbestos. The claim settled favourably at a JSM for a high six-figure sum (led by Simon Kilvington QC).
- Secured one of the highest ever settlements in a living mesothelioma case (led by Frank Burton QC).
- Acted for the claimant (led by Rob Weir QC) in a living mesothelioma case of very high value due to the claimant's extensive business interests. Niall obtained judgment at a show cause hearing where the Court rejected the defendant's threshold safety level arguments because the exposure was deemed "substantial" within the meaning of s.63 of the Factories Act 1961.
- Currently acting in a number of cases where exposure to asbestos dust occurred through washing overalls.
- Acted for the successful claimant in an asbestosis case where limitation issues (particularly in relation to constructive knowledge and s.33 of the Limitation Act 1980) were complicated by the claimant's learning difficulties.
- Acted for the successful claimant exposed to small amounts of asbestos dust (including from brake linings) at a car garage (led by Ronald Walker QC).
- Acted for the successful claimant in a fatal mesothelioma case where the exposure took place in the 1940s.
- Acted for the successful claimant in a fatal mesothelioma case involving difficult issues of liability, complex

limitation arguments (concerning the construction of an agreement to extend the primary limitation period, date of knowledge and section 33 of the Limitation Act 1980), and the negligent handling of the claim by previous solicitors. The claim settled for a substantial six-figure sum.

In addition to his asbestos work, Niall is experienced in the full range of issues that tend to crop up in noise-induced hearing loss cases, and in particular those concerning breach of duty, limitation and medical causation.

Clinical Negligence

Niall's practice in this area covers a wide range of medical negligence, as well as the negligence of associated professionals. He is experienced in the full range of breach of duty and causation issues that tend to arise in these cases. He frequently conducts conferences with multiple experts.

Recent examples of Niall's clinical negligence work include the following:

- Recently acted for the successful claimant (led by Ronald Walker QC) in a fatal case involving the delayed diagnosis of cervical cancer in a woman deemed too young for screening. The case raised interesting issues about the scope of the *Bolam* principle. It settled favourably at a JSM for a sum that was subsequently approved by Mrs Justice Yip.
- Recently acted for the successful claimant (led by Frank Burton QC) in a complex tetraparesis case involving the mismanagement of evolving spinal pathology. The case settled favourably at a JSM for a seven-figure sum.
- Recently advised a defendant motor insurer on whether intervening clinical negligence broke the chain of causation between a road traffic accident and the death of the claimant's son.
- Currently acting for the claimant (unled) in a fatal case involving the delayed diagnosis of leiomyosarcoma, an aggressive form of soft tissue cancer.

Fraud

Niall is ranked as a leading junior (tier one) in Insurance Fraud in the current edition of the Legal 500, which notes that "he goes the extra mile and demonstrates assiduous attention to detail".

Niall is sought after for his expertise in defeating all forms of fraudulent personal injury claims. He is knowledgeable and skilled in the use of surveillance and social media evidence.

He has vast experience in countering fraudulent EL, PL and RTA claims (fabricated, staged, semi-staged/induced, 'phantom passenger', LVI and dishonest credit hire and storage claims), both stand-alone cases and those forming part of large and complex fraud rings. He regularly acts on behalf of major insurers and the MIB.

Niall has defeated numerous fraudulent claims at trial and as a result of carefully timed interlocutory applications (frequently drafted by him). He regularly drafts defences, advises both on paper and in conference, and he frequently tests the evidence of defendants at the earliest stages of the litigation. He is knowledgeable in associated costs issues (including wasted costs and third party costs orders). He is valued by instructing solicitors for his thorough preparation, attention to detail and skilled cross-examinations.

Niall acted for the successful defendant in *Zimi v London Central Bus Co. Ltd.* (Lawtel 10/4/2015), one of the first cases where QOCS was set aside and costs awarded against a claimant found to be fundamentally dishonest pursuant to CPR r.44.16.

Niall has given several lectures on the evolving jurisprudence on 'fundamental dishonesty' under the CPR and s.57 of the Criminal Justice and Courts Act 2015.

Recent examples of Niall's fraud work include the following:

- Acted for the successful defendant at a two-day trial involving extensive intelligence and engineering evidence.

The claim was dismissed as not genuine.

- Acted for the successful defendant at a two-day trial where the claimant sought aggravated damages, alleging he had been deliberately driven into by the defendant bus driver. The claim was dismissed as fundamentally dishonest.
- Acted for the successful defendant in an EL claim where the claimant alleged he had contracted a rare illness at work (Q fever). Extensive surveillance footage showed his claim to be fundamentally dishonest.
- Acted for the successful defendant in a two-day trial where the judge provided an early indication of his unwillingness to find fraud. After a full day of cross-examination and a further day of submissions the judge found all the claims to be fraudulent.
- Acted for the defendant in a case where the expert medical evidence suggested the claimant had faked the symptoms of her alleged complex regional pain syndrome. The claim settled for a fraction of its pleaded value.
- Acted for the successful insurer seeking to reclaim money paid out on a substantial property damage claim suspected to have been fraudulent.
- Acted for the defendant motor insurer in a fraud case where the claimant was involved in a large fraud ring in East London and where much of the evidence only came to light shortly before trial. An application to amend the defence to plead fraud was successfully made and the claim was discontinued shortly after service of the amended defence.
- Acted for the successful defendant in an employers' liability case where the claimant employee alleged he was struck by a defective service lift door. At trial, the claimant's evidence was so discredited in cross-examination that the judge held he had in fact been meddling with a perfectly functional lift.
- Secured an award of aggravated damages for a defendant who had been injured in an RTA by the actions of a fraudulent claimant.

Professional Negligence

In keeping with 12KBW's expertise in the area, Niall has a particular interest in solicitors' negligence litigation. He is able to bring to bear a detailed understanding of the mechanics of personal injury and clinical negligence litigation.

Costs

Niall is knowledgeable and skilled in all aspects of contentious costs litigation. He regularly advises on costs issues and appears at detailed assessments.

Niall has represented claimants and defendants at numerous costs and case management conferences, and he is very experienced in the kinds of arguments that secure positive results at these hearings. Judicial approaches to CCMCs vary widely, and ensuring a good outcome can often affect the future course of the litigation.

Credit Hire

Niall has built up extensive experience in this area. He acts for defendants in complex and higher value cases (including those pleaded in excess of £100k). He has given numerous lectures on this area of law.

Insurance

Niall has considerable expertise in the law of motor insurance, and he regularly advises on issues concerning policy interpretation, the Road Traffic Act 1988, Article 75 and other MIB matters, and the interaction between domestic law and relevant EU directives.

Niall also advises insurers in relation to first party coverage matters, particularly where issues concerning breaches of the duty of utmost good faith are said to arise.

Recent work includes acting for the successful defendant motor insurer in a case about whether the "vehicle normally based in the UK" requirement of Regulation 2(1) of the European Communities (Rights against Insurers) Regulations 2002 meant the said Regulations failed properly to implement relevant EU Directives.

Abuse

Niall acts for claimants, and for defendant organisations alleged to be vicariously liable, in historic sexual abuse cases.

Recent examples of Niall's work in this area include the following:

- Currently acting for a number of defendant organisations alleged to be vicariously liable for historic abuse perpetrated by former employees.
- Acted for the successful claimants in two separate CICA cases involving the interpretation of the time limit waiver provisions under the 2008 Criminal Injuries Compensation Scheme in the context of allegations of historic sexual abuse.
- Advised a defendant employer on complex limitation issues in a case where one of its former employees was accused of historic sexual abuse. The case gave rise to difficult issues of constructive knowledge and factors affecting the exercise of the court's discretion pursuant to section 33 of the Limitation Act 1980.

Product Liability

Niall is experienced and knowledgeable in issues arising under the Consumer Protection Act 1987 and at common law.

Recent examples of Niall's work in this area include the following:

- Acted for defendants in numerous cases where it was alleged that contaminated foodstuffs were sold to claimants.
- Acted for the successful child claimant in a case involving the traumatic amputation of the tip of her finger in the defective opening mechanism of a foldable pushchair.

Inquests

Niall has appeared at a number of inquests where future civil claims were contemplated arising from the death. He is knowledgeable and skilled in the procedural and evidential issues that arise.

Property

Niall has acted for claimants and insurers in a number of cases of tortious damage to property.

Recent examples of Niall's work in this area include the following:

- Acted for the successful insurer in an alleged flood damage claim involving the quantification of business losses and potentially fraudulent exaggeration of aspects of the claim.
- Acted for a number of claimants whose properties had been damaged by the spread of tree roots from adjacent land.
- Acted for the defendant insurer in an interesting case involving flood damage to a patented but not fully marketed invention said to have considerable profit-earning potential. The case gave rise to complex quantification issues. Niall settled the claim at a formal mediation for less than a fifth of its pleaded value.

Qualifications & Awards

BVC (Outstanding; ranked 6th in year), BPP Law School

GDL (Commendation), City University

D.Phil. in Philosophy, Balliol College, University of Oxford

B.Phil. in Philosophy, Balliol College, University of Oxford

M.A. (First Class Honours) in Philosophy and Sociology, University of Glasgow

Lincoln's Inn: Megarry Scholarship, Buchanan Prize, Lord Denning Scholarship, Lord Bowen Scholarship, and Hardwicke Entrance Award.

Balliol College, University of Oxford: Snell Exhibition.

University of Glasgow: Faculty of Arts Prize for best overall performance in finals by a male student, plus two further subject prizes.

Appointments & Memberships

Appointed to the Attorney General's C Panel of Junior Counsel to the Crown (in 2015)

Personal Injuries Bar Association

Professional Negligence Bar Association

London Common Law and Commercial Bar Association

Background

Before coming to the Bar, Niall worked in academia and in public policy research for a leading Westminster think tank. He has published in the fields of health policy and medical ethics, and he retains an interest in the legal aspects of these areas.