



Jamie Clarke



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"Jamie is annoyingly good as an opponent. Confident, assured and very reliable. Is always very well-prepared and enthusiastic about his instructions."
(Legal 500, 2021)



Jamie Clarke joined Crown Office Chambers in August 2014, bringing with him nearly 20 years' experience in his core practice areas of personal injury, industrial disease, clinical negligence and professional negligence disputes arising out of those areas of practice.

Jamie complements his core practice areas with acknowledged expertise in related areas such as costs, inquests and coverage / indemnity disputes. Jamie has extensive experience and expertise in all aspects of the conduct of injury and disease litigation, such as costs budgeting, limitation, experts' disputes, withdrawal of admissions, disclosure and settling counter schedules.

In recruiting Jamie, Chambers recognised that his track-record and reputation complemented that of Chambers' multi award-winning team. He has a reputation as a highly effective and determined trial advocate, with a strong work ethic and focus on providing his clients with an enhanced level of service. In recent years Jamie has enjoyed a very high success rate at trial as well as securing highly favourable outcomes for his clients in settlement meetings and mediations, and also at interim hearings. Clients have remarked on Jamie's technical and tactical insight, balanced with an accessible and determined approach. Jamie welcomes the opportunity to be involved from the earliest possible stages of a claim in order to provide strategic advice tailored to his clients' particular commercial and personal objectives.

Clinical Negligence

Jamie maintains a clinical negligence practices, acting mainly for Claimants, but occasionally for medical professionals practising in the private sector.

Jamie has experience of the following types of claim:

- Missed cancer diagnosis.
- Failed cosmetic surgery claims.
- Negligently administered anaesthesia giving rise to brain damage and personality change.

Personal Injury

Jamie Clarke is recommended as having established expertise in injury liability including employers', occupational disease, public and occupiers', RTA / Motor and general insurance with a particular focus on strategy, liability, quantum, coverage and compulsory insurance.

He represents claimants and defendants, as well as insurance clients direct in relation to their liability and indemnity personal injury claims. In recent years, Jamie's practice has been predominantly defendant focused.

Jamie has experience of all types of injury, including brain and spinal injuries and psychiatric injuries, with particular expertise in limb and joint injuries, including traumatic amputations. He specialises in specific aspects of injury claims, including analysis of CRU, CRU appeals, limitation, dissolved Defendants, disclosure of insurance documents and policy details, the impact of public provision of care in utmost severity / catastrophic claims, and rare heads of loss, fraud/intelligence & surveillance, exaggerated and opportunistic claim, and more complex areas of injury practice such as defending claims for chronic pain / fibromyalgia, somatoform disorders and stress at work. He also acts for clients where, in the course of injury proceedings, reputations may be at stake and a different strategic approach is required.

Selected Cases

- *Morphew v East Sussex County Council* – Secured a successful outcome at 5 day “battle of experts” trial concerning an ankle injury that was either worth a 4-figure sum or a 6-figure sum depending on which experts' view prevailed. The key to success was the insight gained from conferences with own expert and Jamie's cross-examination of the opposing expert.
- *Martin v South Tees NHS Trust & Endeavour SCH PLC* – At a multi-day trial, on behalf of the NHSLA, securing a favourable ruling on the construction of the indemnity clause in an NHS trust's 1200 page agreement with its PFI service provider for EL claims brought against the trust.
- *Smallwood v Bector* Secured – Favourable settlement for insurer on 1st day of multi-day trial where the Claimant relied on medico-legal evidence of a 'celebrity' clinician whose treatment fees formed a substantial proportion of the special damages claims, giving rise to issues of conflict set out in Jamie's skeleton argument.
- *Forbes v Partnership Health Group* – Advised closely on strategy, in particular as to deployment of surveillance evidence and costs implications, leading to a Claimant accepting a historic part 36 offer days before a 5-day trial.
- *Harrop v Pstores* – Successfully resisting Defendant's application to withdraw an admission of liability in an EL claim at a fully contested 3-hour hearing.
- *Duncum v Churm* – In a claim pleaded at over £1m, with Jamie's close tactical input, a position was reached where the Claimant accepted a much lower historic part 36 out of time. On Jamie's advice, Insurers issued an application that the Claimant pay the costs not only from 21 days after the part 36 offer up to acceptance but from the much earlier date when the Claimant had first served her £1m schedule on the basis that that schedule had been a 'serious impediment to schedule'. At a fully contested hearing before HHJ Harris over the course of 1 day, at which Jamie appeared alone for insurers against a senior junior led by a senior silk, HHJ Harris made the order sought on behalf of insurers. The Court of Appeal refused permission to appeal. This imported decision is reported on Lawtel.

- Scott Martin v ROC UK Ltd – Successfully defending at a multi-day trial this EL claim against a fuel station operator arising out of alleged lifting of a sand-filled bucket, establishing in cross examination that the accident could not have happened in the manner alleged.
- Cook v Fred Olsen – Successfully defending at trial a claim against a cruise line operator that the teak deck surround of a Jacuzzi on an open deck was an inappropriate surface.
- Khan v Palagan Limited – Defending applications for summary judgment / strike out in the context of an EL claim by a worker who became ensnared in machinery where the employer had subsequently pleaded guilty in criminal proceedings brought by the HSE.
- Re Roy Whiteland – Attending 4-day inquest on behalf of a private care home, touching on the death of an elderly gentleman who suffered pressure sores following delayed diagnosis of a fracture leading to paralysis. Other interested parties included local NHS hospitals, previous private care home and GP surgery. The coroner’s narrative verdict attributed no blame to Jamie’s client.
- Re Mr Hutcheson – Attending 1-day inquest on behalf of a driver involved in a collision with a cyclist on a Transport for London highway.

Product Liability

Jamie accepts instructions for advisory and practical advice in this area and has received commendation from clients for his work.

Jamie Clarke’s product liability experience most commonly involves accidents and diseases in employment settings.

In recent months Jamie has been involved in the following cases:

- A farmer who suffered very serious leg injuries allegedly associated with the failure of the cowling of a seed drill attached to a plough. This case involved cross-border issues because the seed drill was manufactured in Sweden.
- A skilled factory worker who suffered a penetrating elbow injury whilst using a table cutter to fabricate a table, the allegations concerned a drill bit that failed owing to alleged manufacturing flaws. Issues included the insolvency of the manufacturer.
- Several claims for occupational asthma and other respiratory diseases associated with allegedly defective fume extraction systems.

In the claims he is handling on behalf of insurers (including foreign insurers), Jamie is seeing renewed interest by Claimant advisers in bringing claims pursuant to the Employer’s Liability (Defective Equipment) Act 1969, following the Coalition government’s restriction on reliance by Claimants on the “6-pack” in civil claims following the coming into force and bedding down of s.69 of the Employment and Regulatory Reform Act 2013.

Jamie also has recent experience of product claims by members of the public, for example an allegation of a spontaneously collapsing foot stool in a famous London restaurant.



Professional Liability

Jamie complements his expertise in personal injury, disease and clinical negligence matters by advising solicitors and their insurers in relation to failed and mishandled litigation in these areas. Inevitably such claims are predominantly missed limitation or claims struck out for procedural default, where Jamie's input will be in relation to valuation of the lost opportunity but Jamie also has experience of arising out of failed trials. Jamie is currently advising in relation to a failed EL trial heard in several tranches over many days with approximately 20 lay and expert witnesses.

On the strength of his expertise in this area, Jamie was recently instructed to assist a firm of solicitors settle a cohort of PPI claims against a high street bank. Jamie's key contribution was successfully to resist a strike out application for alleged want of prosecution in the conduct of the PPI claims. The application was heard by the designated circuit Judge in Manchester sitting in the Mercantile court. This fully contested 1 day hearing had a significant bearing on numerous other cases, some in other courts, and represented a very significant outcome in terms of preserving numerous PPI claims and legal costs as well as avoiding substantial adverse costs.

Selected Cases

- Advising a panel solicitor with significant exposure in 'Son of Tag' (AXA Insurance Limited v Akther & Darby Solicitors & Ors), one of The Lawyer's top 10 cases of 2009, re liability in a claim for breach of contractual duty.
- Claims involving negligence by experts in the conduct of litigation.
- Numerous claims for negligent handling of so-called 'coal claims' by solicitors and barristers, under the DTI's £1bn compensation scheme for mineworkers suffering occupational diseases such as VWF.
- Several loss of chance claim for approx. £1m in respect of negligent handling by solicitors of an underlying PI claim.
- Numerous failed mesothelioma claims where the principal issue tends to be calculation of the lost years' claim.
- Several claims where the Insured solicitor has acted for the Claimant in both employment tribunal proceedings and a personal injury claim, and where settlement of the ET proceedings has had the effect of eliminating or minimising the common law claim for personal injury (the principles in Sherriff v Smith Klyne Tugs).
- Failed high value claims for allergies developed whilst working in Hospital environments.
- Failed clinical negligence claims.
- Failed marine and aviation claims.
- Solicitors and counsel pursuing a claim to trial and securing judgment on an undervaluation.
- Several claims advising on the role of counsel, and as necessary devising tactics in relation to and pursuing part 20 claims against Counsel / BMIF.
- Jamie has particular experience handling underlying claims settled at an undervalue and that have foundered because of (a) procedural error (strike out for want of prosecution or automatically under CCR O.17 r11) or (b) operation of the Limitation Act 1980.

Industrial Disease

Industrial disease litigation has been a substantial aspect of Jamie's practice since pupillage when he was seconded to British Coal to work on discovery exercises for the group litigation then being conducted by the Unions. A key factor in Jamie's move to Crown Office Chambers was the opportunity to consolidate this aspect of practice amongst colleagues recognised as leading practitioners in this area.

Jamie is familiar with claims involving all of the diseases commonly encountered, including asbestos, lung cancer, asthma, HAVS/WRULD, noise-induced hearing loss, dermatitis. Typical of claims in this area, Jamie advises regularly, in writing and in conference, on the issues that commonly arise in disease claims, including causation and evidence including technical/scientific expert evidence, parties, limitation, apportionment.

In April 2011, presented 90-minute seminar for CPD Webinars Limited (now Legal PD, part of Sweet & Maxwell) entitled "A guide to Occupational Disease Litigation".

In February 2015, presented paper on Breach of Duty following *McCarthy v M&S Plc* to the International Asbestos Litigation Forum.

Selected Cases

- *Wickes & Teeling v Davison & Global Enterprises Limited* – Defence of an estate's claim for over £1m against an employer in his personal capacity for deceased's alleged exposure to asbestos whilst handling Calor gas heaters in the late 1970s in a period where the former employer held no insurance: claim was withdrawn following robust Defence drafted by counsel and application to the Master for summary trial.
- *Gibbs v Western Landscapes* – On 2nd day of a multi-day trial of a HAVS claim brought by a former local authority gardener, Jamie made a successful submission of no case to answer. The key had been cross-examination of the Claimant on the basis of which, the claim could no longer be supported by the Claimant's own expert who had been listening to the Claimant's evidence at the back of court.
- *Gulliver v Banham Poultry & Another* – Successfully strike out of a claim brought by a chicken catcher, applying the "Mitchell" criteria as revised in *Denton*.
- *Smith v Astongold* – Application regarding possible nullity of proceedings in claim brought against dissolved company.
- *Jackson v Michael Joyce Civil Engineering* – Involved in securing discontinuance of this NIHL claim.
- Robust pleading and marshalling of expert evidence, secured withdrawal of claim brought against a local authority by a pest control officer for WRULD associated with use of a standard caulking gun to lay poison.
- Ongoing advice in relation to indemnities arising out multiple EL claims brought against former employer where employees transferred to a sub-contractor.
- Advising insurer taking over book of captive insurer of an electricity generator regarding potential long tail liabilities for EL disease claims.



Recommendations

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