



Richard Lynagh KC



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“He epitomises the perfect QC – he’s always well prepared, clients adore him and he’s an excellent advocate.”
(Chambers & Partners 2019)



Richard Lynagh QC is a former Head of Crown Office Chambers.

He has a wide-ranging civil practice, which includes: personal injury, insurance & reinsurance, professional liability, commercial litigation, consumer protection and product liability.

Clinical Negligence

He has advised or represented Claimants and Defendants, including the National Health Service Litigation Authority, in cases of clinical negligence including claims arising out of:

- incorrect advice given in connection with amniocentesis;
- unwanted birth;
- alleged lack of informed consent to surgery;
- failure to diagnose correctly in cases of cardiac disorder, glaucoma and myeloma;
- meningitis;
- failure to diagnose and alleviate compartment syndrome;
- negligent management of heart-lung equipment during paediatric cardiac surgery;
- anaesthetic accidents;
- brain injuries sustained at birth.

Criminal Regulatory & Environmental

He has advised and represented clients in connection with Health and Safety criminal proceedings, including prosecutions arising out of: electrocution, the escape of asbestos during demolition work, a swimming pool fatality, building site collapse, factory accidents.



Selected Cases

- R v Bowmer & Kirkland Ltd & Bingham Davis Ltd – The defence of the structural engineer involved in the collapse of a tower crane.
- R v York College – The defence of the management of a nursery in which a fatality had occurred.
- HSE v Powys County Council – The defence of a local authority in whose swimming pool a near-fatality had occurred.

Insurance & Reinsurance

Recommended in the Legal 500.

He advises and appears on behalf of both Claimants and Defendants.

He has regularly acted for many of the leading insurers.

He is also instructed on behalf of numerous Lloyd's Underwriters.

He is retained in a very wide variety of cases involving an insurance element.

He has been instructed on behalf of the ABI itself in connection with issues arising out of the insolvency of insurance companies.

His insurance practice frequently involves advice and litigation relating to policy coverage and the construction of policy wording.

Selected Cases

- Ted Baker v AXA Insurance [2012] EWHC 1406 (Comm) – Whether theft by employee was covered by policy without discrete Fidelity Insurance, relevance of intention to replicate previous cover, rectification, estoppel by convention, whether scope of cover misrepresented to co insurers by brokers.
- Verizon UK Ltd v Bowmer & Kirkland Ltd (2009) – He was instructed in a large claim in the TCC arising out of the alleged failure of the heating / cooling systems of commercial premises.
- Markel & QBE v SGC & Ors [2009] – Lloyd's Rep IR 77 (also [2008] EWHC 3087 (Comm) & [2009] EWCA Civ 790) – Surety bonds, insurance binders, civil fraud & directors' duties.
- Shinedean Ltd v Alldown Ltd & AXA [2006] 1 WLR 2696 – Significant case in which the Court of Appeal reviewed the law relating to a claims co-operation clause (construed as a condition precedent) and whether prejudice was an essential or relevant element before Insurers could refuse indemnity.
- In Bankers Insurance Co Ltd v South & Gardner [2004] Lloyd's Rep IR 1 – He was instructed on behalf of Insurers in a case of a serious head injury arising out of the use of a Jet Ski. The case involved the issue of whether a jet ski fell within the definition of a "waterborne craft" and the consequences of a failure to notify insurers of the incident.
- Mc Alpine v BAI (Run-Off) Ltd [2000] 1 Lloyd's Rep 437 – This is a case in which the Court of Appeal considered the law in respect of the consequences of a breach by an insured of a notification

requirement (construed as an innominate term) in a contract of insurance.

- *Citybank v Lebian* – He has been instructed by insurers in a variety of fire cases including welding and electrical fires and in particular a fire in the underground UPS cables of Citibank.

Personal Injury

Recommended in the Legal 500 and Chambers & Partners.

Richard is widely considered to be one of the top-ranking barristers within the personal injury field. He represents both claimants and defendants in fatal and catastrophic injury claims.

In 2010 he represented the Claimants in two trials in the Cayman Islands against the Attorney General.

He has advised in connection with accidents occurring in France and Belgium and the insurance implications.

He was instructed on behalf of a hotel in Barbados in respect of a claim for indemnity by a tour company in respect of a serious injury sustained by a British guest in a fall from a balcony. The case raised issues of *inter alia*, Bajan law and building standards and questions of jurisdiction and *forum conveniens*.

He has recently been retained in respect of a number of cases involving accidents abroad and in particular has negotiated settlements in respect of cases in Jersey.

Selected Cases

- *Dusek & Ors v Stormharbour* [2015] EWHC 37 – This case concerns the extent of the duty of care imposed upon a UK employer in respect of foreign travel undertaken by one of its senior employees who was killed in a helicopter crash in Peru.
- *Love v Halfords Ltd* [2014] P.I.Q.R. P20 – He defended a claim brought against Halfords Limited under the Consumer Protection Act in respect of serious head injuries sustained by a rider in a cycle accident. It was alleged that there had been a mechanical defect in the bicycle. There were very complicated matters of expert metallurgy evidence.
- *Johnston v Suzuki GB PLC* [2014] – He represented Suzuki in its defence of a claim brought by a motorcyclist who claimed that serious injuries suffered in an accident had been caused by a failure of the frame of the motorcycle. The preparations for trial involved extensive expert metallurgical and reconstruction evidence. The Claimant discontinued shortly before trial.
- *Joyce v O'Brien & Tradex Insurance Co Ltd* [2012] EWHC 1234 (QB) [2013] EWCA Civ 546 – Represented Insurers in a case involving consideration by the Court of Appeal of the maxim *ex turpi causa non oritur actio*. It was held that a participant in a joint enterprise of theft involving dangerous getaway driving could not recover for injuries suffered in the course of that enterprise – parties jointly engaged in a criminal enterprise owe no duty of care to each other – unlawful activity of the Claimant in the theft and getaway was as directly causative as the driving of the First Defendant so the Claimant was precluded from recovering for the consequences of his own criminal conduct.
- *Dass v Dass* [2013] EWHC 2520 (Haddon-Cave J) – This appeal involved the Court's approach to the exclusion of expert evidence where the Defendants had not complied with case management directions.
- *Cleightonhills v Bembridge Marine* [2012] EWHC 3449 (TCC) – Claim by employer against steel

erector who erected a platform from which a man later fell and suffered serious injuries – contractor’s obligation to warn about deficiencies in design – contractor’s fitness for purpose obligations in tort – whether a contractor is entitled to delegate its responsibilities to others further down the contractual chain – apportionment under the Civil Liability Contribution Act 1978 where several Defendants are sued and some have already paid substantial sums by way of settlement to the party claiming contribution.

- Donald Berry v Ashtead Plant Hire & Ors [2012] – Instructed on behalf of land owners who were allowing their land to be used for a music festival. The Claimant sustained a severe brain damage by electrocution when the crane of his delivery lorry contacted an overhead power cable. The case raised issues of the scope of a landowner’s duties to visitors. The claim against the landowners was discontinued before trial.
- Uren v Corporate Leisure Ltd & MOD [2010] EWHC 46 QB [2011] EWCA Civ 66, [2013] EWHC 353 – The First Defendants provided and ran a series of competitive games of an “It’s a Knock-Out” nature for a Health and Fun day at an RAF base. The Claimant suffered a broken neck when he dived into a shallow pool in the course of such a game.
- Frost v Oldfield [2010] EWHC 279 QB – High speed collision between two motorcycles on the notorious Cat and Fiddle road in Cheshire. The case turned largely upon the highly conflicting expert accident reconstruction evidence due to the absence of eyewitness evidence as to the collision itself.
- Darg v Commissioner of Police for the Metropolis & Venson Public Sector Group Ltd [2009] EWHC 684 QB – Instructed on behalf of a Claimant who had sustained a relatively minor cut to a finger. Significant medical dispute as to whether the cut had lead to carpal tunnel syndrome and subsequently to a seriously disabling complex regional pain syndrome.
- Duncan v Acrabuild Ltd [2009] – An appeal relating to alleged breaches of inter alia The Construction (Health, Safety and Welfare) Regulations 1996 and head injuries sustained in a fall from a roof space. The Trial judge had dismissed the claim and the Claimant’s appeal was withdrawn shortly before the hearing date.
- Stevens v Allianz & Chaucer Syndicates [2008] – He was instructed in arbitration proceedings relating to whether the pilot of a helicopter that had crashed killing the pilot and all passengers had been flown recklessly and/or in breach of the relevant Air Regulations so that there would be no liability under the relevant insurance policy.
- Alan Ide v ATB Sales [2007] EWHC 1667 QB (Gray J) [2008] EWCA Civ 424 – Instructed on behalf of a Claimant who had suffered serious head injuries in a fall from a mountain bike. The claim under the Consumer Protection Act 1987 involved complex matters of metallurgy and issues relating to the discharge of the burden of proof in cases where there exist various alternative possible causes of an injury. The hearing in the Court of Appeal raised issues as to the discharge by a Claimant of the burden of establishing causation in circumstances where there are alternative explanations for the loss advanced. The application of the House of Lords’ ruling in *The Popi M* [1985] 1 WLR 948 (*Rhesa Shipping Co SA v Edmunds*) was considered.
- Gleeson v Court [2007] EWHC 2397 (QB) – He appeared on behalf of the Defendant in which the issue was the appropriate reduction to be made in the damages awarded to a Claimant who had been travelling unrestrained in the boot area of a hatchback car driven by an acquaintance who had been drinking. The case is interesting in view of the limited amount of previous authority on the question of the appropriate reduction in a passenger’s damages when there are two such elements of contributory negligence.
- Slater v Buckinghamshire County Council and Stigwood [2004] EWHC 77 and [2004] EWCA Civ 1478 – Instructed at first instance and in the Court of Appeal, on behalf of a coach company in a trial, which involved consideration of the duty and standard of care applicable to the operation of a service for the transport of handicapped persons and questions relating to the scope of Road Traffic Act

insurance cover.

Product Liability

He has extensive experience of product liability and manufacturing matters and has represented Claimants and major manufacturers.

He has been involved in inter alia the following:

- Group litigation relating to the use of Benzodiazepine anxiolytics.
- Defence of the importer of an allegedly contaminated flavouring ingredient that was subsequently incorporated into a very large number of ready meals by a major retailer.
- Advising in a case where it had been alleged that a weedkiller product was unsafe and had caused widespread damage to strawberry crops.
- Acting in the litigation arising out of a fatal helicopter crash which was shown to have resulted from the failure of the tail rotor drive shaft.
- Cases involving issues of compliance with various British Standards and Building Regulations (in the UK and abroad).
- Advising in respect of a fatal F1 accident.
- Cases arising out of road accidents where there were issues of alleged mechanical defects including tyre failure.
- Advising in a case involving the manufacture of Ford motor cars.
- A claim arising out of alleged manufacturing and/or servicing defects in respect of a Volvo lorry involved in a serious accident.
- A claim against Harley Davidson arising out of a serious accident allegedly due to mechanical failure of a component.
- Defending a motor dealership in a case which settled shortly before trial relating to a Ferrari which had been involved in a serious accident when the driver lost control. There were allegations about the safety of the particular model and the storage of fault information in its memory.
- Advising in respect of the German/European manufacturing standards of an imported bicycle component.
- Cases involving fires which had allegedly been caused by inadequately manufactured or maintained equipment.
- Acting for a Scandinavian company which is a major manufacturer of household equipment where it was alleged that a failure of their product had led to a serious accident.

Reported Cases

- Alan Ide v ATB Sales [2007] EWHC 1667 QB, [2008] EWCA Civ 424 – He succeeded on behalf of a Claimant at first instance and again in the Court of Appeal. The Claimant had suffered serious head injuries in a fall from a mountain bike. The central issue was whether the handlebars had fractured causing the fall or fractured as a result thereof. There were complex issues of inter alia metallurgy relating to the manufacturing process.
- Love v Halfords Ltd [2014] P.I.Q.R. P20 – He successfully defended a claim brought against Halfords Limited under the Consumer Protection Act in respect of serious head injuries sustained by a rider in a bicycle accident. It was alleged that there had been a mechanical defect in the bicycle and

detailed issues of metallurgy were involved.

- *Johnston v Suzuki GB PLC* [2014] – Acting for Suzuki in its defence of a claim brought by a motorcyclist who claimed that very serious injuries suffered in an accident had been caused by a failure of the frame of the motorcycle. Extensive expert metallurgical and reconstruction evidence was collated and disclosed. The Claimant then discontinued shortly before trial.

Professional Liability

He has particular experience in cases involving allegations of negligence on the part of surveyors, estate agents, solicitors, barristers, accountants, insurance brokers, planning consultants and project managers.

Selected Cases

- *Lingfield Properties (Darlington) Ltd v Padgett Lavender Associates* [2007] EWHC 2989 QB (Tugendhat J) – He was involved the defence of a town-planning consultant in respect of allegations of professional negligence arising out of the lapse of planning permission for a large retail park. The case raises interesting questions as to the extent of a professional's duties, limitation of actions and the award of costs on an indemnity basis.
- *Goshawk v Buena Vista et al* (2001) – He was instructed on behalf of loss adjusters accused of negligence in the placing of insurance cover for the American version of the television show “Who wants to be a Millionaire?”
- *Motor Crown Petroleum Ltd v S J Berwin & Co & Unwin* (1998) (Longmore J) – He represented a planning consultant accused of negligence in connection with an application for planning permission for a petrol station.

Property Damage

He has extensive experience in property damage and has been involved in many such cases, a large number of which have concerned related insurance issues of policy coverage, and / or other contractual issue such as the effect of exclusion clauses.

Selected Cases

- *Ted Baker v AXA Insurance* [2012] EWHC 1406 – Loss of large quantity of stock due to theft by employee.
- *Nulty & Ors v Milton Keynes BC* [2011] EWHC 2847 – Acting for the security company that were originally sued but subsequently released from a claim relating to a major fire in a waste-recycling centre.
- *Verizon UK Ltd v Bowmer & Kirkland Ltd* (2009) – A large claim arising out of the alleged failure of a heating / cooling system in commercial premises.
- *Citibank v Lebian* – Acting for the Claimants in a case concerning an underground fire that damaged the cables of the uninterruptible power supply (UPS) to a major bank.



Sports Law

His expertise in personal injury, insurance and cases involving highly technical issues has resulted in his being instructed in a wide range of sports cases from F1 motor racing to “It’s a Knock-Out” type events (Participant diving head-first into a shallow pool rendered paraplegic – Uren v Corporate Leisure Ltd and MOD [2010] EWHC 46, [2011] EWCA Civ 66 and [2013] EWHC 353) and physical team-bonding activities (Participants negotiating a high wall on an assault course while roped together – serious back injury sustained by a female participant).

These cases have included insurance disputes relating to career-ending footballing injuries (Southampton Leisure Holdings PLC v Avon Insurance), and others have involved accidents arising from mountain biking (Sudden fracture of handlebar causing accident and brain damage to rider – Ide v ATB Sales [2007] EWHC 1667 and [2008] EWCA Civ 424), motorcycling (Sudden failure of swinging arm of motorcycle resulting in accident and serious injury to rider), swimming (Near-fatal drowning incident in pool – issues as to safety systems and supervision), diving (Serious neck injuries in cases involving Claimants diving into shallow reservoir and pond on common land respectively), leisure flying (Helicopter crash in poor weather in UK – Stevens v Allianz and Chaucer Syndicates), horse riding (Issue as to suitability of horse for inexperienced rider who was injured when horse bolted) and weight training (Injury while using gym machine. Issue as to safety of the equipment and quality of supervision).

Civil/Insurance Fraud

Richard has extensive experience of claims involving allegations of exaggeration or dishonesty in respect of injuries or financial loss. Cases have included successfully deploying covert surveillance evidence to disprove complaints, establishing that documents had been forged and establishing at trial that an allegation against an innocent driver of involvement in a serious accident was the result of a fraudulent conspiracy.

Reported cases include:

- Markel and QBE v SGC [2009] Lloyd’s Rep IR 177 (Director’s liability);
- Ted Baker v AXA Insurance [2012] EWHC 1406 (Insurance consequences of theft by an employee);
- Joyce v O’Brien and Tradex Insurance Co [2012] EWHC 1234 and [2013] EWCA 546 (Ex Turpi Causa).

He has lectured on issues related to dishonesty including Section 57 of the 2015 Act, Contempt Proceedings, Claims for Deceit and Ex Turpi Causa.

His experience in civil litigation is supplemented by his previous experience in the criminal courts involving inter alia the prosecution of offences of dishonesty and fraud.

He sat as a Recorder in the Crown Court for 10 years.



Memberships

- LCLCBA
- PNBA

Recommendations

"He is very experienced, knowledgeable and pragmatic. He gives sound and detailed advice and is very good on the detail."

Chambers & Partners, 2022

"Extremely knowledgeable in insurance work. Richard is extremely thorough and pays great attention to detail, which is imperative in this type of work. Provides sensible, pragmatic advice for clients and his experience shows through in difficult negotiations. Very much a team player, always works to deadlines and is very efficient."

Legal 500, 2022

"The perfect QC – a skilful advocate with an excellent knowledge of the law."

Legal 500, 2021

"He is extremely experienced and very forensic in his approach. His attention to detail is second to none."

Chambers & Partners, 2021

"Extremely knowledgeable and pays great attention to detail, which is always necessary in indemnity/coverage cases – he draws on his vast experience to find solutions, is calm and unruffled, and a very good advocate."

Legal 500, 2021

"An extremely experienced barrister who is calm, measured and forensic, as well as extremely quick and responsive. He is very much a team player."

Chambers & Partners, 2020

'He is very commercially aware.'

Legal 500, 2020

"His advocacy and client care are first rate."

Chambers & Partners, 2020

"The consummate QC, there is no better"

Legal 500, 2018

"Highly knowledgeable in his field. Very thorough. He provides a pragmatic analysis of the issues informed by his wealth of experience."

Legal 500, 2017

"He is held in high regard for his tactical skills and steely determination - you want him on your side."

Chambers & Partners, 2016

"He's extremely knowledgeable, easy to talk to and has a very good presence in court - all the things you



would look for in a barrister."
Chambers & Partners, 2016