

"He is very detailed and doesn't leave anything to chance."  
(Chambers & Partners 2015)



Toby specialises in product liability, clinical and professional negligence, personal injury, and commercial and insurance-related disputes. Cases are often of a scientific or technical nature.

Accredited as a mediator (ADR Group) in 2004. Accredited as a Mediator and Corporate Panel Member by the Dispute Board Federation (2009). On sabbatical in 2005 – 2006, practised in New Zealand as a barrister (England and Wales), accredited as a mediator (LEADR, New Zealand), and worked for New Zealand's national no-fault compensation scheme (ACC), developing and advising on public policy.

Pro bono / charity: Chair of trustees, Porters' Progress UK (2007-2012). Director and vice-chair of the Lambeth Law Centre (2004).

## Clinical Negligence

Toby is regularly instructed by NHSLA in catastrophic injury cases.

### Selected Cases

- **Crofton v NHSLA** – Ongoing proceedings after [2007] EWCA Civ 71, now settled.
- **A v C NHS Trust** – Spastic tetraplegic cerebral palsy due to perinatal negligence; £5M claim; leader at trial Michael de Navarro QC; settled at the door of the court; settlement approved, 10.12.08, Underhill J).
- **Sutton v Princess Alexandra Hospital NHS Trust Lawtel LTLPI 8/9/2009** – Severe cauda equina syndrome allegedly equivalent to paraplegia; claimant represented by Frank Burton QC and Susan Freeborn; settled for £1.6M.
- **Pena-Romero v Abbeyfield / Bucks NHS Trust** – £3.2M claim, failure to diagnose cerebral abscess leading to catastrophic brain injury.

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## Commercial

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### Selected Cases

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- Junior counsel for the successful defendant in *Holliday Pigments v WBB*. Supply of kaolin china clay – allegations: clay mineralogy out of specification, causing failure of chemical process for producing ultramarine blue pigment. £2.6M claim. Result: Claim discontinued shortly before trial.
- Represented the successful contractor Amey in *LB Silica Sand v Central Bedfordshire Council / Amey LG Ltd*. Landslip in quarry allegedly due to highway drainage maintenance works. Up to £3.4M claimed. Claim against highway authority and highway maintenance contractor. Negligence / *Rylands v Fletcher*/strict liability under s.100 of the Highways Act 1980. *Ex turpi causa* in relation to claimant’s alleged breach of the same section. Breaches of planning requirements. Whether an easement existed in relation to the relevant drainage. Geotechnical evidence – cause and severity of landslip. Result: After late vacation of two successive trial dates, claim struck out for non-compliance with order for security for costs.
- Alleged negligence in the supply / installation / upgrading of corona discharge equipment for the treatment of polythene film. £1M claimed.
- Finance company claiming return of loans under block agreement with CFA claims providers, c. £1.25M claim.
- “Battle of the forms” contractual dispute after destruction of railway maintenance equipment by vandals.
- Sale of goods, supply of services including skilled services. E.g. sole distribution agreement for computer hardware, design and installation of computer system.
- Contamination of wine bottling plant allegedly by defective water softener / absence of adequate filters – claim against manufacturers and designers of plant.
- Contamination of pharmaceutical powder during grinding.
- Escape of domestic fuel oil due to tank failure during delivery causing contamination and possible contamination of aquifer.
- Pipeline for sewage outfall, alleged defects.
- General construction; instructed as one of large team of counsel in *Norwich Union v Schal* (claim pleaded at £124 million – alleged professional negligence of construction manager, architects, engineers, quantity surveyors).
- Negligence of burglar-alarm monitoring company. Contractual chain. Duty of care to property owner where not in direct contractual relationship.

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## Insurance & Reinsurance

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### Selected Cases

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- Fire, employers’ liability and motor policy disputes.
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- Sperm bank – use of sperm with chromosomal abnormality – coverage – medical malpractice policy – product liability policy.
- Policy disputes arising out of alleged fraud, material non-disclosure, etc.
- Member of team of counsel in *Deutsche Rückversicherung v Walbrook Ins Co Ltd & Others* [1995] 1 WLR 1017.
- Junior counsel in £1M Commercial Court insurance claim relating to loss of undersea tractor equipment; meaning of ‘days’ grace’.
- Construction of exclusion clause in public liability policy relating to property “in the charge of” the tortfeasor, after house fire.
- Motor insurance disputes arising in relation to policy coverage, Road Traffic Act and MIB insurance liability.

## International Arbitration

Accredited as a mediator, ADR Group (2004), LEADR (New Zealand) (2005). Mediator and Corporate Panel Member, Dispute Board Federation (2009).

Available for instruction as a mediator, or as counsel in mediations.

## Personal Injury

Toby is instructed in all types of personal injury cases, from minor to catastrophic, including; employers’ liability, industrial disease, fatal accidents, brain / psychological injury.

## Selected Cases

- **Swain v (1) Geoffrey Osborne Ltd (2) PJ Browne Ltd [2010] EWHC 1108 (QB); [2010] EWHC 3118 (QB), Foscett J. Represented Geoffrey Osborne Ltd** – Claimant allegedly slipped on muddy pavement opposite a building site. He sued the main contractor Osbornes and the groundworks subcontractor Browne. Both were found liable at trial. In contribution proceedings Osbornes obtained a full indemnity from Browne, together with indemnity costs from the expiry of a Part 36 offer.
- **Hopps v Mott MacDonald/MOD [2009] EWHC 1881 (QB) (led at trial by Mark Turner QC)** – Claimant engineer was working in Basra, Iraq. He was injured when a road-side bomb was detonated near the Army Land rover in which he was travelling. He sued his “employers” Mott MacDonald and the MOD for failing to provide him with an armoured vehicle. £1M claimed. Issues included proper scope of expert evidence, “security” evidence, ballistics expert evidence, whether the reconstruction of Iraq’s infrastructure was a “desirable activity” within the meaning of s.1 of the Compensation Act 2006; whether that section has retrospective application.
- **Aktas v Adepta [2010] EWCA Civ 1170; [2011] 2 W.L.R. 945** – Junior Counsel – Abuse of process, failure to serve of claim form, second set of proceedings. Effect of *Horton v Sadler* [2007] 1 AC 307 on *Hashtroudi v Hancock* [2004] EWCA Civ 652 and other cases.

- **Chinery v EWE [2002] EWCA** – Junior Counsel – Liability of subcontractor who creates a dangerous trap, in respect of injury to another subcontractor’s employee (rendered paraplegic).

## Product Liability

### Selected Cases

- **Henderson v Feldbinder** – Acted for successful German lorry manufacturer sued by UK employer alleging negligent design of handrail on tanker. Issues included whether compliance with German safety standard was sufficient.
- **Snow & Rock v Bosch, Iveco et al** – Acted for Bosch GmbH in relation to vehicle fire allegedly due to negligently designed / manufactured ABS unit.
- Toughened glass panels on new office building spontaneously shattering, claim against manufacturers of panels and against enamel paint manufacturers (£½ M claim).
- Vehicle fires allegedly due to design / manufacturing faults: Cars (2 manufacturers), lorries (2 manufacturers).
- Fires allegedly due to electrical faults in domestic appliances (eg toaster, washing machine, Beko fridge-freezer).
- Industrial glass-handling machine severing engineer’s hand – allegedly defective system of electronic sensors.
- Fire in sauna at leisure centre – claim against sauna designers / suppliers.
- Racing motorcycle wheel shattering.
- Exploding paint canister causing blindness.
- Finger amputated in car park ticket vending machine. Acted for manufacturers. Held: Pre-marketing testing inadequate. Adequate testing would have revealed risk of injury, which could easily have been removed. However, actual risk was so low that a reasonable manufacturer would not have taken steps to reduce it if known. Therefore claim failed.
- Medtronic Sprint Fidelis lead for ICD (Implantable Cardioverter Defibrillator). Represented the claimant against Medtronic. Claim settled.
- Intervertebral disc prosthesis – alleged defects in design / manufacture causing severe back problems – development risk defence – skilled intermediary. Represented manufacturer. Claimant represented by Barry Cotter QC. Claim settled at mediation.
- Incorrect knee implant – cause of long-term knee problems.
- Fertility clinic – sperm bank – use of sperm with chromosomal abnormality – liability in relation to resulting fetuses / babies.

## Professional Liability

Surveyors, accountants, solicitors, insurance brokers, estates managers, engineers. e.g. negligence of marine engineers repairing narrow boat allegedly causing subsequent sinking; drug manufacture, contamination of reprocessed chemical, £1.5M claim; junior counsel in *The London Institute v Planned Maintenance Engineering* (engineers allegedly causing flood of university tower-block, £2.5M)



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claim); Solicitors' failure to warn of subsidence risk in conveyance; Surveyor appointed under London (Building Acts) Amendment Act 1939 (c.£400,000 claim. Held: no duty of care); failure to warn (electrician – alleged failure to warn supermarket of danger of hot fuses – supermarket burned down); acted for c.150 claimants in group litigation against former solicitors for negligently settling vibration white finger claims at an undervalue – issues including meaning of aggregation clause in professional indemnity policy.

## Selected Cases

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- Commissioning of electronic control device for industrial electric motor. Fire allegedly due to incorrect programming of device lowering protection against fire due to other faulty components (£1.5M claim).
- Claim against water treatment engineers relating to water treatment services in tyre factory allegedly leading to boiler furnace tube collapse (£2.5M claim).
- Claim against engineers allegedly causing explosions in print-drying machinery.
- Cold-top electric furnace for lead crystal glass manufacture – claim against designers / suppliers – disintegration of allegedly unsuitable tiles ( 2.2M+ claim).

## Qualifications

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- ADR Accredited Mediator

## Memberships

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- London Common Law & Commercial Bar Association
- Personal Injury Bar Association
- Professional Negligence Bar Association
- Technology & Construction Bar Association

## Recommendations

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"Methodical and persuasive."

Legal 500 2016

"He is very detailed and doesn't leave anything to chance."

Chambers & Partners 2015

"He's very approachable and responds very quickly with detailed advice."

Chambers & Partners 2015

"Highly regarded for his versatility."

Chambers & Partners 2014

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"He provides excellent advice which leaves no room for doubt."  
Legal 500 2014

"Excellent in the courtroom."  
Legal 500 2013