12
King's Bench Walk

Brian McCluggage

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AREAS OF EXPERTISE

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

JUDICAL APPOINTMENTS

Fee-paid Employment Judge (2010 to date); Bar Disciplinary Tribunal (2017- 2024)

Brian McCluggage is a leading practitioner in high-value insurance litigation with thirty years' experience at the Bar. He acts principally for insurers and defendant solicitors in catastrophic personal injury claims, complex liability disputes, and substantial property damage and indemnity work.

He is regularly instructed as sole counsel in claims valued up to £15 million. His practice is characterised by meticulous evidential preparation, command of technical and scientific material, and a direct, strategically focused approach to case management. He is recognised for his courtroom advocacy, particularly his cross-examination of expert witnesses and his willingness to take difficult points at trial.

Brian's early years at the Bar saw him develop a broad civil and regulatory practice. He was junior counsel to the Crown for twenty years and gained experience across professional negligence, contractual disputes, indirect taxation, and injunctive relief. This grounding informs his current more specialised practice.

He is also a tenant at Nine St John Street Chambers in Manchester.

Personal Injury

Brian’s personal injury practice focuses on claims where the value in dispute exceeds £1 million. He has particular expertise in brain injury (from contested minor TBI through to disorders of consciousness), spinal cord injury, and amputation. He is thoroughly familiar with the complexities of accommodation claims, deputyship and case management issues, and the structuring of periodical payment orders.

He also undertakes complex fatal accident claims, especially those involving business interests, partnership structures, or forensic accountancy evidence. His approach to joint settlement meetings and mediations is thorough and strategically prepared, with detailed schedule analysis and risk assessment.

Liability work includes road traffic collisions involving reconstruction evidence, accidents on construction sites, and claims under the Occupiers’ Liability Act and Highways Act where technical defences arise.

Insurance and Indemnity

Brian has a substantial practice acting for insurers in indemnity and coverage disputes. His work includes the construction of policy wordings, co-insurance and contribution, misrepresentation and non-disclosure, breach of

warranty and condition, and aggregation. Insurance contexts have included household, property, water, sewerage and environmental pollution, and high value motor.

He is additionally instructed on Road Traffic Act/Article 75 issues, and disputes involving the Motor Insurers' Bureau under both the Uninsured and Untraced Drivers' Agreements.

He also has extensive experience of insurance fraud litigation and was involved in several leading cases, including *Axa v. Financial Claims Solutions* [2018] EWCA Civ 1330, the first Court of Appeal authority on exemplary damages in the insurance fraud context. He is well versed in cross-examining dishonest claimants.

Property Damage

Brian accepts instructions in substantial property damage disputes and related coverage work. His practice encompasses claims arising from damage to infrastructure and commercial property, including railway bridges and high-value structures; fire damage claims, including disputes concerning *Rylands v Fletcher* liability and *ignis suus*; and claims involving goods damaged or lost in the custody of third parties, where issues of bailment and sub-bailment arise.

Notable property work includes defending claims of over £30 million arising from the Lancashire Business Park fire and litigating disputes involving prestige and collectible vehicles valued in excess of £1 million.

Clinical Negligence

Brian's clinical negligence experience is predominantly in the defence of military claims on behalf of the Ministry of Defence. He has particular expertise in cases involving allegations of missed PTSD diagnoses.

Selected Cases

Settlements involving Periodical Payment Orders/high value

W v. Estate of Crane-Davies & Euroins AD (2026): Brain injury claim against Greek insurer. Schedule of £5.2m (£4.2m net of contributory negligence); Issues over applicable law and enforcement of indemnity limit. Central issue: whether claimant's low functioning is attributable to organic injury or to psychological factors amenable to rehabilitation. Settled for six figures.

T v. B (2025): Complete T9/10 paraplegia (ASIA A) sustained by pedestrian. Acting for insurer at JSM. Schedule of £10.9m; Central disputes on care regime (24-hour care versus promotion of independence) and accommodation (including claimed hydro spa at £413,000). Settled for £6m against leading silk.

JCA v. CIC & MBD (2024): High Court, Manchester. Brain injury/psychiatric causation dispute. Settlement of £4.1m against Schedule of £14m as sole counsel against Silk and Junior. Central issue: causation of treatment-resistant schizophrenia.

ABS v. LS & Esure (2023): High Court, Birmingham. Severe brain and orthopaedic injury with complex pre-existing conditions. Settled for PPO on capitalised value of £3m against Silk and Junior.

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

BLA v. SAW (2022): Severe brain injury. Complex case management and relationship stability issues. Settled for £2.25m.

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

Re H (2021): Serious brain injury. Settled at £6m through Periodical Payment Order.

Appeals

Denzil v Mohammed [2023] EWHC 2077 (KB): High Court appeal on the scope of fundamental dishonesty. Appeared for the respondent insurer. The court clarified that dishonesty concerning a minor, unpleaded matter (here, a transient head swelling) cannot be characterised as going to the root of the claim.

Kore v Brocklebank [2019] EWHC 3491 (QB): High Court appeal before Turner J on a novel point concerning the Fatal Accidents Act 1976. Appeared for the appellant. The court held that each dependant has a separate cause of action; a pre-action Part 36 offer accepted by one dependant does not bind unnamed dependants whose claims have not been advanced in correspondence. The representative status under the Act arises only upon issue of proceedings.

Axa v. Financial Claims Solutions [2018] EWCA Civ 1330: Leading case on exemplary damages in insurance fraud.

Tuson v. Murphy [2018] EWCA Civ 461: Leading case on the interaction between CPR Part 36 and exaggerated claims.

Shui v. University of Manchester [2018] ICR 77: EAT authority on procedural adjustments for litigants with mental illness.

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

Blake v. Croasdale & Esure [2017] EWHC 1336 (QB): Leading case on resiling from admissions.

Liability Trials

Colizzi v. Coulson [2024] EWHC 1956 (KB): Three-day High Court liability trial before Julian Knowles J. Defended catastrophic brain injury claim as sole counsel against Silk. Claim dismissed in full. Central issues: sightlines and conspicuity; accident reconstruction evidence. Judgment contains detailed analysis of evidential burden where eyewitness accounts conflict.

Bennion v. Adventure Park Snowdonia Ltd [2023] EWHC 3334 (KB): Five-day High Court trial defending tetraplegia claim arising from accident at UK's first artificial surfing lagoon.

McD v. B (2023): County Court.Liability success in running-down case. Novel point on construction of the 'counterfactual' reasonable driver.

Sugden v Cumbria County Council (2023, HHJ Beech): Three-day trial defending highway authority in cycling brain injury claim on the B5289. Claim dismissed on causation, breach, and s.58 grounds. Judgment endorses departure from *Well-Maintained Highways Code* inspection frequencies where local conditions justify, and confirms written risk assessments are not mandatory.

Forsyth v. Carnforth Hotel (2021): Successful defence of occupier's liability claim following C's fall when intoxicated through hotel window, sustaining severe leg injury. Novus actus and volenti defences succeeded.

Blake v. Croasdale [2019] RTR 73: Successful defence of £4m brain damage claim on grounds of *ex turpi causa*.

Monks v. Connollys Scaffolding (2022): Five-day liability and quantum trial involving fraud allegations. £700,000 claim reduced to £3,500.

McHugh v. Okai-Koi [2017] EWHC 1346 (QB): Fatal claim arising from road rage incident. *Ex turpi causa* and contributory negligence. Claimant failed to beat Part 36 after four-day High Court trial.

Hatfield v. Drax & SG Transport (2017): Successful liability defence in truck accident resulting in upper limb amputation.

Qualifications

MA (Cantab)

LL.M. (Toronto)

Middle Temple Harold G Fox Scholar