

MARK ROBERTS

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AREAS OF EXPERTISE

Civil

- Personal Injury Exclusively Defendant
- Catastrophic Injury Claims
- Disease
- Employer's Liability
- Public Liability
- RTA (with particular emphasis on fraudulent claims)
- Credit Hire
- Occupiers and Highways Liability
- Litigation Procedure
- Costs

PROFILE OVERVIEW

Mark is a very highly regarded specialist personal injury counsel, who has for some years worked exclusively for Defendants and their insurance companies.

Mark joined the bar in 2001 after 10 highly successful years as a Solicitor and Partner in a large nationwide firm. His practice at that stage involved working not only for a number of insurance companies but also Defendant organisations directly, including a number of household name PLCs.

Although at the bar he initially had a number of years of representing and advising Claimants Mark has for some years, operated from his natural base and specialises in working for Defendants and their Insurance Companies in all areas and at all levels of personal injury litigation.

He has a pragmatic, common sense approach to litigation and is aware not only of significant points of principle which are often involved but also the wider commercial picture. He is known for his approachable and informal manner and regularly meets with insurers and their policyholders to discuss a wide range of issues.

He is IT savvy, both receiving instructions/briefs by e mail and also dispatching papers in a similar fashion. On a daily basis, both formally and informally, he advises by e mail. Mark undertakes conferences by video link, or even Skype. He also regularly travels to advise in conference.

Mark is known for his extremely swift turnaround of paperwork.

He takes pride in being respected by those Judges he appears in front of at all levels.

Although Marks Chambers are based in Liverpool, his practice takes him all over the country for Court hearings, conferences, client meetings and lectures. Despite valiant efforts however, he has yet to attend the County Court in Newport, Isle of Wight (having come close to doing so on only one occasion!).

NOTABLE CASES

Catastrophic Injury and High-Value Multitrack Claims

For many years, Mark has been involved in the assessment and defence of high-value, complex injury claims and has considerable experience in Joint Settlement Meetings and round table discussions. Such claims represent a significant element of his practice. He regularly appears in Court against leading counsel (in the words of Rumpole – alone and without a leader!).

Examples include, but are not limited, to the following:

- The defence of claims for chronic pain and fibromyalgia, which by their very nature involve significant claims for future loss and, very often, the involvement of multiple experts, including occupational therapists. Mark has been able to put strategies in place to both challenge the veracity and also reduce the value of such claims. He is extremely experienced at dealing with the questioning and, where necessary, selection of appropriate expert witnesses.
- The successful defence, following a three day trial, (subsequently upheld by The Court of Appeal), of a golf club in respect of a visitor who was blinded during a tee shot. Allegations of poor course design and signage were made against the club by the golfer responsible. The injured visitor sued both the club and the offending golfer, succeeding only against the latter. Those representing the golfer unsuccessfully attempted to appeal on the grounds of causation;
- Settlement, at JSM, of a 'drop foot' case, following a shattered hip in a tripping accident, in the sum of over £250,000. The claim involved, in particular, careful analysis of the Claimant's future care needs, with conflicting evidence from occupational therapists and spinal surgeons;
- The securing of a costs order in favour of the Defendant in a case pleaded at over £350,000. The Claimant at trial recovered less than £10,000 on the basis of surveillance evidence, which confirmed dishonesty as to the reporting of ongoing symptoms. The Court concluded that the deliberate obfuscation of the true position as to injury and associated losses on the part of the Claimant, had significantly and unnecessarily increased costs by forcing the Defendant to obtain its own evidence from a number of experts at significant expense. That in its own right justified a costs penalty. The Claimant was ordered to pay 90% of the Defendant's costs on an indemnity basis. The Defendant was ordered to pay the Claimant's costs but only to the date of issue of proceedings;
- The securing of a costs order in favour of the Defendant despite its Part 36 Offer being beaten, in circumstances where the Court concluded that surveillance evidence confirmed dishonesty on the part of the Claimant, at a level which had made it virtually impossible to accurately value both general and special damages. The claim had been pleaded at in excess of £250,000, with damages of £20,000 awarded. The Defendant's Part 36 Offer had been £10,000. Despite this, the Claimant was ordered to pay 80% of the Defendant's costs;
- Settlement, in the sum of £65,000, of a claim against the NHS, pleaded at in excess of £550,000, where the Claimant was represented by leading counsel. The Claimant alleged permanent chronic pain, with an ongoing requirement for treatment. His claim for special damages included the cost of caring for his elderly mother, in the region of £250,000, a role he was allegedly no longer able to fully undertake. The claim involved a direct dispute between consultant orthopaedic surgeons as to the nature of the original injury and its impact on the Claimant into the longer term. Despite neither of them being able to establish an organic basis for injury, the Claimant's expert considered that ongoing symptoms of chronic pain were accident attributable and as such supported the claim for special damages. the Both experts had been called to give oral evidence at trial. Settlement was secured at the door of the Court;
- Settlement in excess of £4,000,000, in respect of an infant, who had suffered irreparable brain damage, with associated physical disabilities. The claim involved experts in a number of disciplines, including neuropsychologists, neurologists and orthopaedic consultants, along with evidence from occupational health experts on each side. An assessment of the long term care needs of the Claimant was necessary, including rehousing in appropriate and suitably adapted accommodation;
- The defence of secondary victim claims from the parents of an only child who was fatally injured in front of them by a motorcyclist. Despite the attempts of paramedics at the scene, in front of each Claimant parent, the child could not be resuscitated. Both parents suffered severe psychiatric shock, one of them attempting suicide. The value of the claim was significantly reduced at trial by successfully arguing that the two Claimants had been able to continue to hold down secure employment. They were represented at trial by leading counsel.

Costs

With his background as a Solicitor before joining the bar, Mark has enjoyed considerable exposure to costs arguments at all level, including points of principle and also actual assessment.

His work includes: –

- Complex detailed assessments;
- The principles of costs assessment in claims which have exited the Portal;
- Premature issue – he was involved in over 40 claims involving the same firm of Claimant Solicitors, who had issued proceedings without having substantively followed The Pre-action Protocol for Personal Injury Claims, resulting in the limiting of recovered costs to those on the fixed recoverable basis;
- Late Notification/Issue Claims;
- The recoverability of costs in exaggerated claims, where damages are awarded far below the claimed figures;

Mark is an expert in the issue of costs recovery from non-parties, particularly After the Event Insurers and/or Solicitors, pursuant to Section 51 of The Senior Courts Act 1981, often appearing against leading counsel.

Mark never loses sight of the fact that the issue of costs, more often than not, is the driving force behind litigation and the tactics involved.

LITIGATION PROCEDURE/CPR

With his background as a Solicitor before joining the bar, Mark is well aware of the technical expertise which is required in an assessment of any case, given the commercial reality that striking out a claim at the earliest opportunity can often by the most cost effective way of defending the litigation. He understands that a thorough knowledge of the CPR is an essential weapon in the armoury of counsel for the Defendant. He regularly appears against leading counsel.

He has considerable experience in dealing with issues such as: –

- Relief from sanctions
- Withdrawing admissions
- Service, both within and out of the jurisdiction
- Admissibility of hearsay evidence
- Strike out applications

Mark has a significant practice in dealing with appeals at all levels and is regularly called upon to advise Defendant insurers about how to deal with ‘unhelpful’ first instance decisions, with a view to having them overturned.

In *Gladwin v Bogescu* [2017] EWHC, Mark successfully represented the Defendant, against leading counsel, in striking out a claim for noncompliance with CPR 32.10. The Claimant had been granted relief from sanctions at first instance, before a Circuit Judge, on the basis that as admissible hearsay evidence, the Defendant would be prejudiced by not being able to cross examine him on credibility issues. In the High Court, Turner J accepted the Defendant’s position that relief should have been refused, the evidence excluded under The Civil Evidence Act 1995 and that, as a corollary, the action should be struck out. The case has set a benchmark for how to deal, at trial, with parties who have are in procedural default in respect of witness evidence.

In one appeal, Mark was able to argue that despite having actually received the Court papers sufficient to allow them the opportunity to file a defence in time, a Defendant based in Portugal had not been properly served in accordance with the Service Regulations of the CPR and that accordingly the claim should be struck out. The Claimant’s attempt to secure permission to the Court of Appeal failed. The claim was worth in excess of £60,000.

In a further case, Mark successfully argued, before a Circuit Judge, for the striking out of a ‘second action’ on the grounds of abuse of process. The first action had been struck out for multiple breaches of the CPR, but proceedings were then reissued within the primary limitation period. The second action was struck out, inter alia, on the grounds of abuse of process, against a background of continued CPR breaches by the Claimant. A threatened third action was not pursued!

OCCUPIERS AND HIGHWAYS LIABILITY

Since qualification (sadly nearly 25 years ago!), Mark has been involved in the defence of supermarket slipping and tripping claims, both by employees and members of the public, as visitors.

He has extensive experience in this field and has been involved in a number of high profile cases, including: –

- The successful defence of a claim by an octonagarian member of the public, knocked over by a member of staff in a busy supermarket – this case involved general issues of legal responsibility to visitors in circumstances where on the face of it fault rested with the employee for the ‘collision.’ It was also a high value claim, with the Claimant having suffered a nasty fracture to the hip, which required replacement surgery and the need for significant future care;
- A significant number of cases where ‘honest Claimants’ have failed at trial in consequence of the alternative Defence set out in *Ward v Tesco Stores* [1977];
- Highway tripping Claims pursuant to The Highways Act 1980, involving issues of credibility, actionable defect, inspection pursuant to Section 58 – he is regularly asked to comment on the prospects of maintaining such inspection defences, involving a review of voluminous highway inspection records.
- Mark regularly advises local authorities and housing associations as to their policies of inspection and maintenance.

FRAUD

Mark is known for his no-nonsense direct approach to fraud and his formidable, robust cross-examination of fraudsters. He has experience in all areas of fraud, including:

- Complex fraud rings
- Low-speed impact
- Phantom passengers/witnesses
- Exaggerated quantum
- Staged and phantom accidents, including those involving telematics evidence
- Expert witness credibility
- Late notification claims

Mark is regularly asked by insurers and solicitors to advise on strategies to be adopted in certain fields.

He takes a ‘cradle to grave’ approach to fraud, believing that consistency of approach by counsel at all stages of the litigation, will give rise to improved results for Defendants.

Mark’s practice in this field more often than not involves complex Multi Track cases. He is quite prepared to put fee and service scale structures in place for Defendants and their insurers, which are extremely competitive.

He has significant experience of High Court contempt proceedings against former Claimants who have been found to have been fundamentally dishonest.

He has (to the delight of his children at the very least!) appeared on BBC television, in ‘Claimed and Shamed’(series 5 episode 1) discussing a case in which CCTV evidence led to the downfall of a fraudulent claim and a post-trial ‘confrontation’ with the Claimant. It is correct to say that television does put on 10 pounds!

CREDIT HIRE

Mark has been involved in the Defence of credit hire claims since *Dimmond* and has particular experience in higher value, high profile claims (some involving Premiership footballers), involving prestige vehicles. Such claims can and regularly do involve claims for hire over £100,000.

He is well versed in the technical issues of credit hire and has been involved in the setting up of a number of strategies for dealing with specific credit hire companies and their instructed solicitors. These have included successful claims in the Tort of Deceit against such organisations, in cases involving phantom hire.

He is a firm believer that whilst a commercial approach to credit hire is extremely important, this should not prevent cases being fought on points of principle.

He does not shy away from appealing first instance decisions if necessary.

Mark has a high success rate in defending credit hire claims to trial and has secured findings of fundamental dishonesty against Claimants in such cases, sufficient to warrant contempt proceedings in the High Court.

EMPLOYERS LIABILITY

For many years Mark has represented and advised large organisations in relation to claims made against them by their employees. His clients continue to include large, sometimes multinational companies, ranging from car manufacturers, supermarket and retail chains, breweries and waste disposal companies, through to the NHS. He is well versed on the issues of causation and limitation.

Examples of his work include: –

- Co-ordinating the strategy for a nationwide brewery in relation to the defence of high value multitrack case. The Claimant, a builder, had attempted to pursue a significant claim for lost earnings, due his alleged inability fulfil certain building contracts. Mark was instrumental in drafting Part 35 and Part 18 Questions which sufficiently challenged the veracity of the disclosed evidence, as to ensure settlement of the claim at nominal value;
- Defending the claims of employees of the NHS in relation to accidents at work, including needle stick injuries, slips and trips, manual handling and disease. These include the claims of nursing staff who have suffered injury at the homes of patients;
- The successful defence of a car manufacturer in relation to manual handling claims;
- Successfully defending a nationwide brewery in a claim by one of their employees, allegedly injured by a hanging basket in the porchway to one of their public houses, a claim which would have had significant repercussions for their premises nationwide, if the Claimant had succeeded;
- Securing the dismissal of a multitrack claim by an employee of a large supermarket chain, allegedly injured by falling bottles of fizzy drinks on the conveyor belt of a checkout. In addition to claiming permanent injury, with significant associated future losses, including handicap on the open labour market, the Claimant challenged the safety of the Defendant's system for dealing with bottles on conveyor belts. Accordingly, not only was the claim worth substantial damages in its own right, if successful, there would have been repercussions across the board for this particular supermarket chain;
- Claims involving alleged repetitive strain injury, deafness and vibration white finger, including dealing with all issues of causation and limitation.

RECOMMENDATIONS

Ranked: Tier 3

(Legal 500 2023) (Leading Juniors Personal Injury)

'Mark is the strongest in the field practicing in motor insurance fraud. He is equally at home with esoteric technical arguments as he is with unpicking cases with a razor-sharp cross-examination at trial.'

Ranked: Tier 3

(Legal 500 2021) (Leading Juniors Personal Injury)

Mark is a great believer that actions speak louder than words. However, here are a few comments which have been made about him by solicitors and others over the years: –

- A vicious cross examiner with the ability to turn around a defence case in court
- Mark has an instinctive feel for the merits of a defence case
- Thorough and analytical with a real eye for detail
- Approachable and always ready to assist by telephone or e mail
- Exactly what an advocate should be, bright, hard working and brimming with common sense, humour and more than a little theatre thrown in for good measure!

PERSONAL

- Mark is married and has 5 children. He sleeps very little!
- In the spare time he is allowed, he has a wide range of interests, including reading, music (he is desperately trying to improve his guitar playing), country sports, sailing and gardening (he spends the very early hours of Saturday and Sunday mornings tending to his smallholding and talking to his chickens!).
- He has a passion for history, particularly First Empire France.
- Mark owns and drives a number of classic vehicles (rusting relics according to his wife) including a 1966 VW Westphalia Camper, a 1969 VW Beetle (his first car born in the year of his own birth!) and a 1958 Ferguson tractor. He despises modern cars for their inconveniences of reliability and comfort!
- Mark aims to reach the age of 105, in order to be able to complete all of the tasks he has set himself in retirement!
- From an educational perspective he attended Leeds Grammar School and The University of East Anglia, where far too many years ago he achieved a 2:1 in Law, before qualifying in 1992.