

James Counsell KC

Year of Call: 1984

Year of Silk: 2017

Direct Access: Yes

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James Counsell KC is widely recognised in the fields of **Clinical** and **Professional Negligence**, **Personal Injury**, regulatory and disciplinary hearings and **Financial Services** claims, both in the UK and abroad.

His clinical negligence work, acting both for claimants and for defendants, is combined with a busy disciplinary and regulatory practice, regularly representing doctors, dentists, barristers, solicitors and those in the financial services sector in their respective disciplinary tribunals. He acts both for practitioners and also for the **BSB** and the **SRA**.

James also acts for claimants and financial institutions in claims based upon the alleged mis-selling of financial products and breaches of FSMA and at common law. He represents litigants in the UK and also in the Middle East with a number of ongoing claims in the DIFC Courts in Dubai (leading **Stephen Doherty**).

He also specialises in acting for survivors of non-recent sexual abuse, having recently acted as lead counsel (leading **Benjamin Bradley**) in two claims against the Jehovah's Witness organisation, the second of which has just been heard in the Supreme Court and numerous claimants in cases against football clubs and other sporting bodies, religious and educational organisations and the Scout Association.

James is a Head of Chambers and Head of Governance at **Outer Temple Chambers**.

Areas of Expertise

Clinical Negligence

James has recently acted on both sides in cases involving allegations of negligence in the fields of general surgery – failure to staple after bowel removal, failure to treat abscess leading to septicaemia and death, spinal surgery (decompression, treatment of spinal fractures), orthopaedics (hip replacement and hip resurfacing), foot and back and knee surgery and failure to diagnose surgical error leading to leg amputation. Additionally, he has expertise in obstetrics (delivery delay, leading to brain damage / failure to intubate, leading to death), general practice (failure to act on histological report indicating carcinoma / failure to refer to specialist, leading to amputation, failure to identify cancerous mole, failure to advise on hepatitis, failure to identify diabetes), vascular surgery (failure to treat post-thrombotic syndrome), paediatrics

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(failure to detect hip dysplasia, shortly after birth) and obstetrics (negligent caesarean section).

Besides clinical issues, he has recently successfully acted for a patient in a consent case where the patient was not told of a late switch of clinician and in a Montgomery case in which failure to explain treatment options is alleged.

The split of his work is roughly 50.50 between claimant and defendant.

James also represents doctors at inquests, and acted for two clinicians in the inquiry into Hyponatraemia-related deaths (O'Hara J) in Northern Ireland (report now published).

Notable Clinical Negligence cases

Featherstone-Harvey v Royal Cornwall Hospitals NHS Trust

Claim by Estate of patient suffering from acute myeloid leukaemia who was negligently exposed to sewage backflow in a shower, leading to sepsis and premature death because he was unable to withstand chemotherapy which would have prolonged his life. Recently settled.

Robus v Yeovil District Hospital NHS Foundation Trust and Somerset NHS Foundation Trust

Defended claim against two hospitals for allegedly negligent treatment, including spinal surgery, leading to paraplegia and need for very extensive care.

Smith v Royal Wolverhampton NHS Trust

Acting for Trust in claim for alleged negligent care in days leading up to birth of child and consequential delays in delivery, leading to quadriplegic cerebral palsy, developmental delay and focal seizures.

Maller v Optimax Clinics Limited & Ayoubi

Claim against laser eye clinic and consultant ophthalmologist for negligent care and treatment and failure properly to advise on risks and alternatives when consenting patient, leading to very severe corneal neuralgia. Trial in October 2023.

Jones v Royal Devon and Exeter NHS Foundation Trust (Lawtel 22 September 2015)

Acted for claimant in successful claim against Trust for failure to "consent" patient properly by informing her of change of surgeon before spinal surgery.

Evans v Royal Wolverhampton Hospitals NHS Trust [2014] EWHC 4132 (QB)

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Brain damage caused after premature discharge from A&E. Case is leading authority on circumstances in which Part 36 offeror may withdraw offer early after receiving anonymous tip-off that the claim was a sham.

Oakes v Birmingham and Solihull Mental Health Foundation Trust

Successfully defended psychiatrist against allegations prescribed wrong psychotic drug, leading to diabetes.

Howe v Taunton & Somerset NHS Foundation Trust

Acted for Claimant who sustained brain injuries as a result of alleged delay in treating subdural haematoma.

Bayley v George Eliot Hospital NHS Trust

Successfully defended Trust against allegation relating to treatment after DVT and alleged failures to consent.

ZZZ v Yeovil NHS Foundation Trust

Claim by insurers of negligent driver for contribution against hospital for alleged delayed diagnosis of spinal fracture leading to paraplegia. Acted for Trust in successful defence of claim.

Disciplinary & Regulatory

A longstanding background in regulatory and disciplinary work beginning with his work for Lloyd's of London (nearly 40 cases over the last 20 years) and now spanning the whole range of regulatory work both for and against professionals, including appearing in hearings involving doctors, dentists, accountants, solicitors, barristers, IFAs and actuaries.

He is frequently instructed (by all the principal defence organisations (including Medical Protection Society, Medical Defence Union and the Medical and Dental Defence Union of Scotland) to represent doctors and dentists at the General Medical Council (the MPTS) and General Dental Council. His work has involved the full range of misconduct and health cases, including clinical malpractice, dishonesty, sexual misconduct and health/addiction-related cases and he regularly conducts appeals in the Administrative Court.

Regularly instructed by the **BSB**, he prosecutes misconduct hearings against barristers leading to disbarment for dishonesty and has acted for the **BSB** in the high profile cases of Constance Briscoe, Shaun Wallace and Damien McCarthy. He now mostly but not exclusively defends and recently successfully defended in a case where a barrister was alleged to have assaulted the defendant outside court in a case and is acting for the BSB in a case involving alleged dishonesty on the part of a Silk.

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He currently regularly advises and represents the **SRA** in the **SDT** and on appeal.

Notable Disciplinary & Regulatory cases

General Medical Council v Dutta

Defended a cosmetic surgeon alleged to have dishonestly misled his patient over identity of supplier breast implants and put pressure on patient to have surgery with offer of price reduction, together with a series of other allegations of misconduct in 4-week FTP hearing. Some of misconduct found proved (not dishonesty) and suspended for nine months. Combined statutory appeal against all findings and judicial review – successful on most of remaining allegations – case sent back to Tribunal by High Court Judge (Warby J) where Dr Dutta’s fitness to practise was found not to be impaired. [2020] EWHC 1974 (Admin)

Bar Standards Board v A Barrister

Defended barrister charged with posting a website advertising a work colleague as a practising barrister able to take direct access work when he had been disbarred and failing to keep direct access client updated with level of fees before submitting an invoice for £420,000 for representing her in matrimonial finance proceedings.

Bar Standards Board v A Barrister

Prosecuting for BSB in disciplinary proceedings against a leading criminal silk for misconduct arising out of allegations which he made about the conduct of the prosecution team, including four QCs, in a criminal trial where he was defending, where he accused the prosecution of acting in bad faith without having adequate grounds for such an allegation. Unsuccessful JR application by Defence in respect of case management decision. Trial over 8 days remotely.

Bar Standards Board v Nicola Cain

Defended in high profile case where high flying employed barrister accused of dishonestly altering court order to deceive client and other acts of dishonesty, whilst suffering mental health issues and enormous pressure at work. Difficult plea in mitigation did not save her from inevitable disbarment.

GMC v Paul Flanigan and Gabrielle McKeever

Defended general practitioner accused of dishonestly proving private prescription for sleeping tablets in order to reduce the levels of NHS prescriptions thereby entitling Practice to QOF payment.

GMC v Onyekpe

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Defended an A&E doctor who admitted having sex with a patient in an A&E department toilet. Suspended for six months but referred to the Court by the PSA and remitted back after a full appeal.

GMC v Pool

Fitness to practise proceedings brought against expert witness (psychiatrist) for failing to act within limits of expertise. Appeal to Administrative Court partially successful – suspension quashed.

GMC v Walker

General Practitioner, working in botox clinic admitting allegations of sexual impropriety with patient, who, with her husband allegedly sought to blackmail him (husband convicted of blackmail). Complainant a dominatrix. Panel accepted his evidence that patient had a financial interest in continuing relations and played a leading role in what occurred, including filming it covertly. Doctor suspended rather than erased. Judicial review proceedings brought mid hearing to resolve challenge to decision to conduct hearing in public. Four week case.

Bar Standards Board v McCarthy

Prosecuted barrister accused of lying about the sending of client care letters in Direct Access instruction – disbarred. Represented BSB when barrister unsuccessfully appealed to Administrative Court.

Bar Standards Board v Wallace

Prosecuted TV quiz barrister accused of misconduct when representing young defendant facing section 18 charge.

Bar Standards Board v Briscoe

Prosecuted barrister and former judge in respect of dishonesty in police investigation into Chris Huhne penalty points prosecution – disbarred.

Bar Standards Board v Jenkins

Secured acquittal of barrister facing allegation that he assaulted the defendant to possession proceedings outside court after hearing in which he was appearing for the claimant.

Howard Godfrey, QC v Bar Standards Board

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Successfully represented the BSB in appeal brought by silk of 25 years, accused of misconduct by making offensive remarks during a criminal appeal about a 15 year old victim of a sexual assault committed by a stepfather.

Commercial Disputes

James has a broad commercial practice with a particular specialism in financial regulatory work, banking, and insurance law. His cases often have an international dimension but mainly in Middle East where he has acted in multi-million-pound disputes and ground-breaking decisions. He also provides advocacy training in the region, at the DIFC Academy for pupils completing the Common Law Advanced Advocacy Skills which is a course for Emirati Advocates and other civil law trained lawyers, in-house counsel, and legal professionals seeking to diversify their skills and enhance their professional development.

He is currently acting for Dubai-based Claimants in a multi-million dollar claim against a Swiss Bank and its Middle Eastern arm in a claim arising out of the provision of investment advisory and placement services provided by a Swiss Bank and its Middle Eastern arm in the Dubai International Finance Centre Courts. He has successfully represented claimants at trial against a Bank in the UK arising out of the provision of negligent information about fixed interest borrowing.

James has acted for Lloyd's of London in proceedings against Lloyd's brokers and underwriters in the Disciplinary and Appeal Tribunal. He advised the Society in respect of the complete revision to the regulatory byelaw regime. He led an inquiry carried out by Lloyd's Legal into the reserving practices of a Lloyd's managing agency, leading to successful and high-profile enforcement proceedings against the agency, its CEO, FD and active underwriter. These proceedings were concluded by admissions, shortly before trial, by each one of the defendants.

Notable Commercial Disputes cases

Al Soor Investments LLC and Others v Julius Baer (Middle East) Limited and Others

Acting for Claimants in claim against Swiss Bank and its Middle Eastern arm brought in DIFC Courts arising out the provision of investment advisory and placement services provided by the Defendant bank after Claimant had been advised to invest about AED 700 million in equity swaps, leading to very significant losses. Two preliminary hearings have taken place, both remotely, relating to jurisdiction and pre-action disclosure (judgment on latter just received).

Lakhan v Lamia [2021] CA 001

Appeal to the DIFC Court of Appeal in this ground-breaking jurisdiction decision which dealt with the circumstances in which a stay should be granted when a matter is referred to the Joint Judicial Committee ("JJC") because proceedings have been brought in the onshore Dubai Courts after a claim to the DIFC Courts had already been made by the other party.

Court of Appeal revised its historical practice of automatically staying proceedings upon petitions being made to the JJC, by confirming that, in order for any stay to take effect, there must first be a positively determined "conflict of jurisdiction", and the mere existence of two sets of proceedings before the DIFC Courts and the onshore Dubai Courts is no longer a sufficient basis on which to stay proceedings.

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Very significant judicial decision grappling with tensions between local courts and DIFC Courts jurisdictions Reported at [2021] CA 001.

BMIF 4-7 v Rizwan Hussain

Fully contested contempt proceedings arising out of an alleged sustained attack by client to obtain control of high value assets owned by claimants, being notes issued as securitisations of various portfolios of commercial mortgages relating to property in the United Kingdom in order to “wrest control” of the Claimant companies. Client alleged to be in breach of previously ordered injunction by repeating his allegedly unlawful activity.

Six-day contempt trial in September 2022 before Miles J in February 2022 (judgment in March [2022] EWHC 449 (Ch)) leading to findings of contempt and a two year maximum sentence of imprisonment and then appeal to CA, heard and refused by Court in July (judgment September 2020 [2022] EWCA Civ 1264).

Very important issues decided: (1) circumstances when application needs permission to appeal and (2) whether there is a power retrospectively to dispense with service of injunction – certificate of public importance granted by CA (Arnold, Stuart-Smith and Nugee LJ) Application to appeal to C refused.

Thomas v Triodos Bank [2017] EWHC 314 (Lawtel AC0154076)

Counsel for the Claimants in claim heard by HHJ Havelock-Allan, QC in which the court considered the extent of the duties owed by a bank to its customers when providing information about fixed interest rate loans.

Wanstall v Clydesdale Bank (2016)

Acting for Claimant farm partnership in claim against bank for negligent advice and information in selling fixed rate business loans.

Professional Negligence

James Counsell KC acts for claimants in professional negligence claims against a wide variety of professionals, including accountants, solicitors, barristers, financial advisers, banks and surveyors, together with a busy medical negligence practice, acting both for claimants and doctors and Trusts.

James acted (successfully) for the Claimants in the widely reported and commented upon case of *Thomas v Triodos Bank* [2017] EWHC 314 in which the court considered the extent of the duties owed by a bank to its customers when providing information about fixed interest rate loans.

He acted (now settled) for four claimants in a series of claims against a solicitor who conducted claims for damages by about 30 survivors of historical sex abuse, against their school, in which the solicitor is alleged to have advised them to

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settle their claims at an undervalue and without proper preparation.

Notable Professional Negligence cases

James, Mewse, Stoiles and Briggs v Deansgate 123 plc

Claims against historic abuse specialist solicitor for settling claims, which he was conducting for a group of claimants, at an undervalue and without obtaining sufficient evidence to advise on settlement.

Leading **Daniel Clarke** and **Patrick Tomison** (both Outer Temple), these four claims have now settled shortly before trial for sums which reflect the awards or settlements which should have been achieved less a discount to allow for the possibility they may have been lost.

Rowse v Nalders LLP

Claim against solicitor (and potentially barrister) for negligent advice as to conduct of claim to Financial Ombudsman Service arising out of complaint against home insurer for failing to compensate adequately after house fire. Failure to advise as to effect of accepting FOS award on prospects of being able to bring civil claim. Defended on the basis that solicitor relied on counsel's advice.

Pearson v Georgiou and Others

Failing to advise client adequately as to entries on planning register, leading to purchase of property blighted by proposed development.

Peryer v Arbuthnot Latham

One of a series of cases where James acted for individual claimants in claims against their financial advisers for the mis-selling of financial products, causing losses arising out of the financial difficulties of AIG during the crash of September 2008.

Thomas v Triodos Bank NV

Successfully acted for Claimant farming business in claim for breach of contract and misrepresentations in selling of fixed rate bank loans by bank [2017] EWHC 314.

Personal Injury

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James acts mostly for claimants in the full range of personal injury work. For the past few years, he has specialised in acting for survivors in non-recent sexual abuse claims against numerous institutions, schools and individuals and is a leading claimant lawyer in this field, regularly being asked to speak on topical issues.

He was lead counsel in the first two successful claims (leading [Benjamin Bradley](#)) against the Jehovah's Witness organisation, leading now to a large number of claims against the JW and also against football and other sports clubs, one of which (against Blackpool FC) was tried in early 2020, judgment given for the Claimant and overturned on appeal and more recently (2022) in an 8 week trial against Manchester City. An appeal in the second JW case was heard by the SC in February 2023. All of these cases are ground-breaking in terms of identifying how far the concept of vicarious liability can go in the context of claims against sporting organisations.

He currently acts for nearly all the claimants in claims against various football clubs arising out of the abuse committed by Barry Bennell and Frank Roper and has a raft of cases for claimants against schools, religious organisations, the Scout Association and other sporting clubs and associations. He regularly speaks on these issues.

Besides these claims, James has a busy practice in complex high value PI claims, mostly but not exclusively for claimants. He recently acted pro bono with Colm Nugent (Gatehouse) in a high value brain damage for an uninsured horse livery yard owner where a horse had escaped causing an RTA.

Notable Personal Injury cases

[A v The Trustees of the Watchtower Bible Tract Society and Others \[2015\] EWHC 1722 \(QB\)](#)

Landmark first successful claim against Jehovah's Witnesses organisation for historic sexual abuse committed by one of its ministerial servants and for vicarious liability of elders in failing to safeguard member of congregation.

[BxB v The Trustees of the Barry Congregation of Jehovah's Witnesses and another](#)

Claim against Jehovah's Witnesses arising out of rape of member of congregation by one its elders in 1990. Successful claims for damages at trial (Nov/Dec 19) before Chamberlain J in the High Court. [2020] 4 WLR 42; [2020] EWHC 156 (QB).

Also important for costs decision: the Defendant refused to negotiate in the face of repeated efforts to engage them in settlement negotiations. James was then successful in obtaining an indemnity costs sanction. Chamberlain J said this was not just because the Claimant 'beat' her own offer but also because he held that the Defendants had conducted the claim unreasonably. [2020] EWHC 656 (QB).

Appeal by Defendant to CA dismissed [2021] 4 WLR 42; [2021] EWCA Civ 356 but recently appealed successfully to SC [2023] UKSC Civ 356.

[DSN v Blackpool Football Club Limited \[2020\] EWHC 595 \(QB\), \[2020\] EWHC 670 \(QB\) \(costs judgment\)](#)

Claimant sexually abused by club scout and coach, Frank Roper on a football tour to New Zealand in 1987 when claimant

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was aged 13. Football club refused to accept legal responsibility for abuse despite tour effectively being a tour by a team of young Blackpool players. Successful on vicarious liability issues and claim also successful despite being 25 years out of time and awarded damages. [2020] EWHC 595 (QB).

Griffiths J awarded indemnity costs against Defendant for refusing to negotiate and for way proceedings conducted, including club's refusal to negotiate. [2020] EWHC 670 (QB);

Subsequent successful appeal [2021] EWCA Civ 1352 and application for permission to appeal to Supreme Court rejected.

TVZ and Others v Manchester City Football Club Ltd

Acting for eight claimants severely affected by very serious sexual abuse by Barry Bennell football coach employed by above named professional club thirty or so years ago. Barry Bennell was convicted in high publicity criminal trials.

Limitation and legal responsibility for abuse (vicarious liability) main issues at trial (Johnson J) but also whether suffered injuries and how much claims worth.

High profile tried over 7 weeks in Autumn 2021. Claims failed but appeal to CA pending.

AXM and Others v Chelsea Football Club Ltd

Acting for four black claimants severely affected by racist abuse by youth coach, Graham Rix and development manager, Glyn Williams when playing for Chelsea's youth teams.

Limitation and legal responsibility for abuse (vicarious liability) main issues at trial to be heard in March 2022 but also whether suffered injuries and how much claims worth.

Claims settled by Chelsea for "six figure" undisclosed sums shortly before trial after club took back conduct of case from its insurers.

Schultz v. Ball and others

Claim by teenage claimant who suffered serious brain injury when travelling as passenger in taxi which collided with horse at night on A3. Complex liability issues including multiple defendants and claims under Animals Act 1971 and in negligence.

Acting pro bono for owner of field from which the horse escaped, and who was uninsured after insurers refused to indemnify.

Claim tried on liability in June 2022 but claim against client was settled very shortly before trial in view of her lack of means.

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Various Claimants v Secretary of State for Health and Social Care

Claim by 85 claimants who suffered non-recent sexual and physical abuse during stay in Hill End Adolescent Unit whilst under excessive and unnecessary sedation. Currently negotiating terms of a compensation scheme to provide redress.

Mewse & Others v Deansgate 123 LLP

Claims by survivors of sexual abuse in a school against former solicitors for advice to settle at an undervalue.

Lisney v CLC & Willmott Dixon

Successfully represented claimant in claim for damages for very serious injuries sustained when he fell from scaffolding tower at work.

Sports Law

James Counsell specialises in appearing before a wide range of disciplinary tribunals. Over the years, he has developed a busy and successful practice in defending and prosecuting across a wide range of professional disciplinary tribunals. His considerable experience in the medical and legal field, defending and prosecuting doctors, solicitors and barristers, often in high profile cases, has provided him with the opportunity and skills to develop his practice into **Sports Law**.

He recently acted for the Bar Standards Board in a high profile case (name of respondent withheld) arising out of **BHA** disciplinary proceedings against a jockey and trainer.

Outside the disciplinary field, James has significant expertise in claims alleging failures to safeguard and for breach of their duty of care by sporting organisations.

Amongst his current cases:

- He is currently representing the survivors of abuse committed by Barry Bennell in multiple claims against Manchester City and Crewe Alexandra;
- He is also acting for survivors in claims of sexual abuse by **Frank Roper against Blackpool Football Club**;
- Further, he is Counsel instructed in a series of high profile claims against Chelsea FC by claimants who were allegedly abused, physically and racially, by a former youth coach and international player.

Many of these High Court claims are ongoing. James's expertise in safeguarding claims has led him to act for claimants in very many historical sex abuse claims against, amongst others, religious organisations, schools, the scouts, together, as mentioned above, with football clubs and other sporting bodies.

He accepts instructions on a Direct Access basis in appropriate cases.

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Notable Sports Law cases

FXF v English National Karate Federation

Claim by young international gold medal winner and British Karate Champion against federation for damages arising out of psychiatric injuries caused by sexual relationship instigated by national coach when she was under-age, leading to the destruction of her career.

Claim for liability for assault and breach of duty by coach and for failures in the investigation of her complaint.

James, together with [Olinga Tahzib](#), recently represented the Claimant at a hearing before the Court of Appeal, the Master of the Rolls presiding, where the court finally put to bed the issue as to whether an application to set aside a judgment in default was an application for relief from sanction to which the Denton principles applied.

Full story [here](#).

Schoultz v. Ball and others

Claim by teenage claimant who suffered serious brain injury when travelling as passenger in taxi which collided with horse at night on A3. Complex liability issues including multiple defendants and claims under Animals Act 1971 and in negligence.

Acting pro bono for owner of field from which the horse escaped, and who was uninsured after insurers refused to indemnify. Claim tried on liability in June 2022 but claim against client was settled shortly before trial in view of her lack of means.

DSN v Blackpool Football Club Limited [2020] EWHC 595 (QB), [2020] EWHC 670 (QB) (costs judgment)

Claimant sexually abused by club scout and coach, Frank Roper on a football tour to New Zealand in 1987 when claimant was aged 13. Football club refused to accept legal responsibility for abuse despite tour effectively being a tour by a team of young Blackpool players. Successful on vicarious liability issues and claim also successful despite being 25 years out of time and awarded damages. [2020] EWHC 595 (QB).

Griffiths J awarded indemnity costs against Defendant for refusing to negotiate and for way proceedings conducted, including club's refusal to negotiate. [2020] EWHC 670 (QB);

Subsequent successful appeal [2021] EWCA Civ 1352 and application for permission to appeal to Supreme Court rejected.

TVZ and Others v Manchester City Football Club Ltd

Acting for eight claimants severely affected by very serious sexual abuse by Barry Bennell football coach employed by above named professional club thirty or so years ago. Barry Bennell was convicted in high publicity criminal trials.

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Limitation and legal responsibility for abuse (vicarious liability) main issues at trial (Johnson J) but also whether suffered injuries and how much claims worth.

High profile tried over 7 weeks in Autumn 2021. Claims failed but appeal to CA pending.

AXM and Others v Chelsea Football Club Ltd

Acting for four black claimants severely affected by racist abuse by youth coach, Graham Rix and development manager, Glyn Williams when playing for Chelsea's youth teams.

Limitation and legal responsibility for abuse (vicarious liability) main issues at trial to be heard in March 2022 but also whether suffered injuries and how much claims worth.

Claims settled by Chelsea for "six figure" undisclosed sums shortly before trial after club took back conduct of case from its insurers.

Memberships

- APIL
- ARDL
- PIBA
- PNBA
- Dubai International Finance Centre Courts
- Western Circuit

Languages

- Conversational French
- Basic Spanish

Publications

- Consultant Editor, Halsbury Laws, Vols 74 and 74A – Medical Professions
- A review of DSN v Blackpool FC and its implications for sexual abuse claims in English football for the website Law in Sport – April 2020
- Football club vicariously liable for historical sex abuse but a girls' boarding school is not (DSN v Blackpool Football Club Ltd and EXE v Governors of the Royal Naval School) – Case Analysis for Lexis PSL – March 2020

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Appointments

- Advocacy trainer for the Academy of Law, Dubai

Recommendations



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