



## Derek Holwill

Call: 1982

### Overview

Derek Holwill specialises in professional negligence and clinical negligence claims. He is listed by both the *Legal 500* and by *Chambers UK* in the top rank of juniors working in the professional negligence field. His work also includes advising on coverage issues and general insurance policy matters.

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### Lawyers

Derek deals with a very wide variety of claims involving both solicitors and barristers. Cases concluded in the course of the last year include *Rangestage Ltd v Mark Gilbert Morse*, a claim against solicitors relating to the drafting of Sale & Purchase Agreement, where the action was successfully struck out; *Patel v Kennard Wells* and *Chan v Kennard Wells*, both claims against solicitors arising out of the alleged mishandling of the security for privately arranged loans; *West One v Griffiths Ing*, a claim against solicitors for an alleged breach of undertaking, involving both construction, causation and trust issues and *Mulcahy v Castles* (CA) concerning the alleged failure properly to instruct Counsel. Derek also acted for the solicitors in *Davisons v Nationwide* [2013] PNL R 12 (CA) an important case involving a breach of trust claim by a mortgage lender against a solicitor, where the solicitor was relieved of liability under the Trustee Act 1925 s.61 because he had acted honestly and reasonably, and the loss had been caused by the fraud of an unconnected third party.

Current cases include a multi-million claim against solicitors alleged to have mishandled commercial litigation relating to the misuse of confidential information, and an associated claim against the expert witnesses who advised in relation to that litigation; a substantial claim relating to the drafting of an agreement relating to development land; a claim against a KC and his instructing solicitors arising out of the drafting of a settlement agreement in a clinical negligence claim; a series of claims against solicitors arising out of the sale of investment properties “off-plan”, where sales were concluded at a marketing

event arranged by the developers; and a claim against solicitors (and Counsel) where it is alleged that there was a negligent failure to appreciate that an insurance claim was doomed to fail. Derek also continues to be instructed in managed litigation in a claim against conveyancing solicitors involving 50+ conveyancing transactions, where it is alleged the conveyancer concerned was guilty of serial negligence or dishonesty allowing various permutations of mortgage frauds to be perpetrated. Derek also continues to act in a number of mortgage lender claims (both for claimants and for defendants), in a wide variety of claims for and against conveyancers and in claims against in respect of allegedly tax advice.

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## **Surveyors and valuers**

Derek regularly advises on claims for and against valuers, both in the context of contribution claims made by solicitors who have been sued by mortgage lenders; and in their own right. Cases in the course of this year include *DB Bank v Colleys* where Derek was acting for valuers in a claim relating to a series of valuations of residential properties. He continues to act for mortgage lenders in a substantial claim against valuers involving multiple valuations (and possibly fraud) and in the case of *Savills v Dorchester Group*, a claim involving allegedly negligent expert advice given by valuation experts in the course of commercial litigation. Other recent cases include *Excel v Alder King*, a claim by a tertiary lender against valuers, raising interesting issues on contributory fault and quantification of loss.

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## **Accountants and auditors**

Derek regularly advises on claims for and against accountants. Cases in the course of the last year include two separate actions against accountants who had failed, when producing an accountant's report for the purposes of the Solicitors' Accounts Rules, to pick up evidence of fraudulent misappropriations by a solicitor. Derek has also been involved in recent decisions on limitation issues in claims against accountants, including *Law Society v Sephton* (HL).

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## **Financial professionals**

Derek deals regularly with claims involving financial advisers and is currently representing IFAs in a number of claims where it is alleged that investment recommendations did not match the client's risk profile and where it is said there were related breaches of the COBS and of FSMA.

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## **Insurance brokers**

Derek has considerable experience of claims against insurance brokers. Claims in the course of the last year involve a broker who allegedly failed to advise properly a client in relation to conditions precedent

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in a Business Interruption policy – a claim giving rise to both factual and causation issues.

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## Insurance

Derek frequently advises on coverage issues, predominantly for insurers, but also for the insured. He regularly advises on a wide range of construction issues including about the inter-relationship between contractual wordings and any applicable “minimum terms” (most commonly in the context of solicitors’ PI policies) and about the applicability of exclusions – most commonly, the dishonesty exclusion in solicitors’ and surveyors’ PI policies (something usually involving conducting “indemnity conferences” with the indemnified on behalf of the insurer). He has conducted numerous arbitrations on coverage issues, both between insurer and insured, and between insurers. He has from time to time been jointly instructed to act as a quasi- arbitrator, and provide an Opinion which the parties have agreed should be determinative of their coverage dispute.

Notable cases include *McManus Seddon Runhams v European Risk* [2014] Lloyd’s Rep IR 169 concerning the pre-requisites for a block notification under a solicitors professional indemnity policy.

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## Medical law

He acts primarily for claimants, and has considerable experience of, in particular, cerebral palsy claims. Notable cases include *Tippett v Guys and St Thomas’ Hospital* [2014] EWHC 917 (QB), involving the interpretation of the CTG trace, a number of other CP cases, and an unusual but substantial claim involving the mistreatment of a shoulder fracture.

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## Recent cases

*Law Society v Sephton* [2006] 2 AC 543 House of Lords – limitation and the date of accrual of a cause of action in negligence.

*McManus Seddon Runhams v European Risk* [2014] Lloyd’s Rep IR 169 (CA) – the pre-requisites for a block notifications under a solicitors professional indemnity policy.

*Davisons v Nationwide* [2013] PNL R 12 (CA) A breach of trust claim by a mortgage lender against a solicitor, where the solicitor was relieved of liability under the Trustee Act 1925 s.61 because he had acted honestly and reasonably, and the loss had been caused by the fraud of an unconnected third party.

*Mulcahy v Castles* [2013] EWCA Civ 1686 – the alleged failure properly to instruct Counsel, and the correct approach to be adopted when dealing with a litigant in person with Asperger’s Syndrome.

*Tippett v Guys and St Thomas’ Hospital* [2014] EWHC 917 (QB), a clinical negligence claim involving

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the interpretation of the CTG trace.

*Watkins v Jones Maidment Wilson*, (CA) [2008] EWCA Civ 134 – limitation – application of Nykredit and of Sephton.

*Abbey National plc v Gouldman* [2003] 1 WLR 2201 concerning the meaning of “same damage” and “just and equitable” under the Civil Liability (Contribution) Act 1978.

*Abbott v Will Gannon & Smith* [2005] BLR 195 (CA) – limitation and the current status of Pirelli.

*Standard Life Assurance Ltd v Oak Dedicated Insurance* [2008] EWHC 222 – construction of aggregation clause and associated professional negligence claims against brokers and solicitors.

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## What others say

"Derek is challenging when he needs to be as well as being very commercial and very user-friendly." *Chambers UK, 2024*

"Derek produces beautiful detailed pleadings and has a detailed knowledge of the area of law. He is also very commercial, likeable and a good team player." *Chambers UK, 2024*

"Excellent forensic analysis of cases." *Legal 500, 2024*

"He's very precise and thinks about what he wants to say very carefully." *Chambers UK, 2023*

"Derek is extremely thorough, clever and commercially aware. I would never pass up an opportunity to work with him." *Chambers UK, 2023*

"Derek is a brilliant barrister. He has a razor sharp mind, he can review large volumes of documents very quickly and get to the heart of the matter in an instant. He is short and to the point, which clients really like. A real star." *Legal 500, 2023*

"An outstanding barrister, essentially a KC in all but name. He can do the whole range of professional indemnity, with genuine expertise in coverage in indemnity." *Chambers UK, 2022*

"Derek is extremely thorough and gets to grips with all of the issues in the case. His advice is clear and precise. He deals effortlessly with complex and thorny issues, whether factual or legal." *Legal 500, 2022*

"Seriously impressive attention to detail. Very reliable and bright, easy to deal with, extremely accommodating. He turns around work very quickly which is so helpful." *Legal 500, 2021*

"In an extremely complicated solicitor negligence case he was impeccably calm and very measured, his advice was thorough and very realistic, and he showed real attention to detail and a grasp of the legal issues." *Chambers UK, 2021*

"He is very user-friendly, incredibly bright and very commercial." *Chambers UK, 2021*

"Very good on paper: he is clear and writes well." *Chambers UK, 2020*

"He is a very good advocate." *Chambers UK, 2020*

"He is an extremely capable advocate" *Legal 500, 2020*

"He is remarkably astute, gives thoughtful and well-reasoned advice and is a persuasive advocate" *Legal 500, 2019*

"He specialises in professional and clinical negligence" *Legal 500, 2019*

"Excellent on paper and even better in advocacy. His attention to detail and ability to be both resolute and approachable makes him a force to be reckoned with, particularly in the mediation environment" *Chambers UK, 2018*

"He is very thorough, turns things round quickly, and is very user-friendly and approachable" *Legal 500, 2017*

"A very approachable and quick-witted advocate" *Legal 500, 2017*

"His attention to detail and his ability to be resolute and approachable make him a force to be reckoned with." "When he speaks in court, everyone listens." *Chambers UK, 2017*

"Extremely bright, and gets to the nub of a case with speed and precision" *Legal 500, 2016*

"He quickly grasps the important issues and provides advice which is clear and commercial." "Very bright, meticulous and easy to work with." *Chambers UK, 2016*

"Thorough, technically excellent and very easy to work with." *Legal 500, 2015*

"Recommended for cerebral palsy claims." *Legal 500, 2015*

"a silk in all but name" "he is incredibly user-friendly and not afraid of pointing out the errors of your ways." "If you give him something that is a hot potato, he is very good at turning it around". *Chambers UK, 2015*

"Particularly appreciated for his imaginative analysis of cases." "He is very bright, and i have never had any doubts about his analysis of medicatal or financial situations. I trust and respect him." *Chambers UK, 2014*

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## Further information

**Education:** MA (Cantab) – First class; Squire Law Scholarship (Gonville & Caius College); Bacon Scholar, Holker Senior Scholarship, Reid Scholarship, Band Scholarship (Grays Inn).

**Personal:** His hobbies include lindy hop and tango, travel to obscure tribes in distant lands, as well as

scuba diving and underwater photography. He is happy to show anyone who asks his pictures of the various sharks with which he has made friends over the years.

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