hailshamchambers

Clerks: **020 7643 5000**

James Gilberthorpe

Call: 2002



Overview

James specialises in costs and clinical negligence.

James' costs work spans most areas of legal practice. He is equally at home considering the multitude of issues which can arise from general common law cases such as personal injury, landlord and tenant and contractual disputes through to commercial cases involving multimillion pound international disputes, intellectual property infringement and insurance indemnity disputes. James' consideration of numerous cases over the years has given him a great insight into the practices of both common law and commercial solicitors.

James has specialised in medical negligence for nearly twenty years and was first ranked in the Legal 500 as a leading practitioner in 2011. Given his experience over many years James is familiar with most areas of medical specialism.

A few examples of the numerous cases that James has been instructed in can be found under the relevant practice section.

Costs

James' interest in costs was initially self-serving. It was the height of the "costs wars" and James was mindful to ensure that his own conditional fee agreements were watertight when it came to enforceability. Now well able to understand the fears of others should a costs point be taken by the other side, he became part of Hailsham's costs team so that he could put his knowledge to good work.

James' costs work spans almost all areas of legal practice. He is equally at home considering the multitude of issues which can arise from general common law cases such as personal injury, landlord and tenant and contractual disputes through to commercial cases involving multimillion pound international disputes, intellectual property infringement and insurance indemnity disputes. James' consideration of

numerous cases over the years has given him a great insight into the practices of both common law and commercial solicitors.

James has appeared at all levels from the SCCO to the Court of Appeal and everything in between, be it at a detailed assessment, an application (such as relief from sanctions or concerning wasted costs), a preliminary issues hearing or a costs budgeting CMC.

James is happy to provide written advice on specific points as they arise and in advance of an anticipated hearing or settlement negotiations. James hopes that his general costs knowledge is of assistance when instructed generally in other areas of his practice. James is a barrister who understands the importance of costs recovery (or indeed limitation) to those who instruct him.

Examples of the cases that James has been involved in include:

- Advising as to the enforceability of an old style CFA for which £1 million in costs were in play, leading to a satisfactory settlement of the same.
- Advising a law firm on the drafting of their retainer documents to ensure compliance with the newly applicable European Insurance Distribution Directive and CFA regulations.
- Drafting documents concerning the assignment of retainers to ensure enforceability in circumstances where the City firm was facing insolvency.
- Urgently advising the paying party to a detailed assessment as to the recoverability of a commercial Silk's six-figure brief fee on grounds of retainer validity and reasonableness.
- Advising a clinical negligence firm as to the non-applicability of fixed costs in cases concerning a personal representative thereby increasing potential recoverability by several multiples.
- Representing a residents management company against a major home builder where it was being alleged by the builder that there were "good reasons" to depart from the approved budget. Upon instruction James noted that the builder had utilised an inflated costs bill for the purposes of negotiation and was therefore able raise issues of misconduct in the course of the assessment under CPR 44.11.
- Representing the paying party in a historical child abuse case where there had been a failure of the Claimant's solicitors to comply with the Cancellation of Contracts made in the Consumer's Home Regulations 2008 resulting in the receiving party's bill being assessed as nil.
- In detailed assessment proceedings arising out of the Supreme Court case of Woodland v Swimming Teachers Association persuading the High Court that the losing Defendants should pay the Claimant's costs of perusing a party she was forced to discontinue following their successful application to withdraw an admission of liability.
- Appearing at a number of detailed assessments on behalf of a medical defence union seeking to challenge the recoverability of "new style" medical negligence ATE premiums on grounds of reasonableness, proportionality and compliance with the underlying regulations.
- Attending detailed assessments in order to persuade the Court to find

"exceptional circumstances" so as to remove a case from the fixed costs regime and therefore increase the recoverable costs by several multiples.
- Representing a partner at a SCCO wasted costs hearing who was accused of failing to accurately certify a bill of costs.
- Attending applications for interim payments on account of costs following the introduction of costs budgeting and the move away from Mars UK v Teknowledge Limited.
- Appearing in the SCCO on applications for "special reasons" to depart from the standard time limits for solicitor/client assessments under the Solicitors Act 1974.
- Attending relief from sanctions applications where the outcome could result in a substantial proportion of costs being disallowed. For example James appeared before Master Campbell in the case of B v Barclays Bank where failure to obtain relief would have resulted in the disallowance of several hundred thousand pounds of costs in a matter concerning an allegedly mis-sold interest rate hedging product.
- Attending detailed assessments to represent a party on the key preliminary points such as retainer validity, hourly rates, proportionality etc.
- Representing parties at multi-day detailed assessment hearings.
- Attending a re-hearing of a provisional assessment and persuading Deputy Master Friston that regard should be had to the individual characteristics of a litigant when considering the proportionality of the bill of costs.

Medical law

Over the years James has advised on cases involving almost all areas of medical specialism. James remains fascinated by medicine but never forgets that finding the best resolution for a case is what his clients need the most. Being accused of negligence or subjected to it can be one of the most stressful life events experienced by any professional or patient. James has wide experience dealing with cases on papers, in conference and at Court across the medical disciplines.

Examples of cases that James has been involved with:

- £1 million pound JSM settlement for an NHS lab technician who suffered from chronic pain arising from an intra-operative nerve injury to a single finger.
- Representation of an NHS Defendant in a claim where there was a failure to identify a brain cavernoma and offer surgical extraction resulting in an aneurysm and significant cognitive defect.
- Six figure JSM settlement for a young army recruit who suffered significant visual loss in one eye due to the NHS' and MOD's failure to diagnose and promptly treat an eye infection.
- Representation of various NHS Defendants in cases concerning allegedly poor care in relation to diabetic foot ulcers resulting in the eventual amputation of one or both legs.
- A claim arising as a result of a surgeon removing two meters of small bowel from a patient during the course of an operation resulting in the Claimant

requiring a life-long stoma bag.
- Several cases for both sides concerning physical and psychiatric injury arising from birth trauma.
- Several cases for both sides concerning the delayed diagnosis of cancer resulting in death and substantial claims under the Fatal Accidents Act 1974.
- Several cases for both sides concerning long term disability arising from the delayed diagnosis of cauda equina.
- Representation of prisoners and doctors in claims arising out of allegedly poor prison healthcare.
- Claims arising in the private healthcare sector including the defence of a Fatal Accident Act claim concerning the excessive administration of anaesthesia.

Commercial

James is well versed in “secret commission” claims and matters arising out of the Consumer Credit Act 1974. James has acted for banks and major financial institutions in numerous PPI and motor commission matters.

What others say

"James works incredibly hard to get fantastic results for his clients in complex clinical negligence claims. He has a fierce eye for detail and is superb with clients and experts." *Legal 500, 2025*

"James is tenacious and passionate about getting the best outcome for the client." *Legal 500, 2024*

“James is very personable, and his down-to-earth approach is welcomed by clients.” *Legal 500, 2022*

“Very supportive of clients and provides a down-to-earth approach” *Legal 500, 2021*

“Very down-to-earth and supportive of clients in a range of cases” *Legal 500, 2020*

“Forensic with an excellent eye to detail” *Legal 500, 2019*

“Personable and experienced” *Legal 500, 2017*

“Responsive in his approach.” *Legal 500, 2016*

"Very clear and responsive in his advice." *Legal 500, 2015*

Further information

Education: Girton College, Cambridge University.

ICO Data protection registration number: **Z9804157**.

James Gilberthorpe is a barrister regulated by the Bar Standards Board. Click to view James Gilberthorpe’s Privacy Notice.