



DEREK O'SULLIVAN QC

Year called 1990

Silk 2016

derek.osullivan@39essex.com



“A standout silk who regularly appears in high-value catastrophic injury cases. He elicits stellar market praise...”

Chambers & Partners 2021

Derek O'Sullivan QC is recognised as one of the country's leading Personal Injury practitioners. His practice concentrates on very high value catastrophic injury claims.

Derek was named 'Personal Injury & Clinical Negligence Junior of the Year' at the Chambers Bar Awards 2012 and then in 2013, 2014, 2015 and 2016 he was a "Star Individual" in the Chambers Personal Injury ranking for Juniors. He took Silk in 2016 and his practice has grown whilst in Silk. He is a Band 1 Leading Personal Injury Silk in both Chambers and Partners 2021 and a Leading Silk in Legal 500 2021.

PRACTICE AREAS

- Personal Injury
- Insurance
- Civil Liability

PRACTICE AREAS

PERSONAL INJURY

"A master tactician and strategic thinker who is always on his game. The depth and breadth of his knowledge across a wide range of issues is second to none". Chambers 2018

BARRISTERS · ARBITRATORS · MEDIATORS

CATASTROPHIC INJURY CLAIMS

Derek's practice concentrates on cases where claimants have been catastrophically injured. He has a particular expertise in relation to brain injury cases- not only cases of severe traumatic brain injury but also "subtle" brain injury cases and cases involving cumulative causes-and spinal injury cases. He is also regularly instructed in amputation cases. Derek is familiar with all elements of catastrophic injury cases and is used to leading a team (including extensive medical expert evidence) defending very high value claims.

OCCUPIER'S LIABILITY CLAIMS

Derek has acted in a very considerable number of occupier's liability claims with the cases dealt with including:-

- Liability of the occupiers of woodlands, nature reserves, holiday parks and historic monuments
- Liability of domestic householders in relation to both the 1957 and 1984 Acts
- Liability of the occupiers of commercial premises (both to visitors and persons attending in the course of their employment)

ROAD TRAFFIC ACCIDENTS

Derek has conducted many cases arising from road traffic accidents and has particular expertise in the interpretation, understanding and challenging of accident reconstruction evidence. A recent example of such an interesting road traffic case in which Derek appeared was *Farah v Abdullahi & 5 Ors* [2020] EWHC 825, QBD Linden J.; a case that involved multiple tortfeasors and insurers as well issues including the cause(s) of the claimant's extensive brain injury, novus actus interveniens and divisibility of injury.

EMPLOYER'S LIABILITY CLAIMS

Derek has extensive experience of acting for defendants in EL claims; in particular he has extensive experience of acting in multi-defendant cases involving accidents on construction sites.

RAIL CLAIMS

For many years Derek has acted for rail companies in relation to claims by passengers, trespassers and claims by injured employees. He is also instructed by Network Rail. He is familiar with the issues in rail claims (including CAHA) and has a good knowledge of the relevant Master Rule books and Railway Standards. Derek recently acted for a train operating company being sued by a passenger after an accident in which the passenger suffered a bilateral amputation after falling between a platform and a moving train: *Robinson v Greater Anglian Railways* (2018) QBD. This was an important decision as the claimant sought (unsuccessfully) to argue that the overall safety of train despatch systems on the rail network was unacceptable. Following this Derek acted for Network Rail/GWR in relation to a claim by a passenger who fell down an escalator at the newly modified Reading Station (thereby suffering a catastrophic spinal injury): *Snell v Network Rail* (2018, QBD; claim discontinued prior to trial). Currently Derek is acting for Network Rail and a number of Train Operating Companies (including being instructed in the claims arising from the New Cumnock Derailment).

SPORTS LAW/SPORTS CLUB CLAIMS

As a keen sportsman Derek has always had an interest in sports law cases and has had frequent instructions over the years, having acted in a number of cases, including: negligent tackle claims (football and rugby) assault claims (football, rugby and ice hockey) catastrophic injury arising from golfer's negligence (jogger blinded by errant golf ball) and a claim against the Football Association (in relation to its rules on banning players following red cards and accumulations of yellow cards). In a recent rugby case Derek was instructed by Cardiff Blues in

respect of the High Court claim brought by Owen Williams against the Cardiff Blues and 5 other Defendants following the catastrophic spinal injury suffered by Owen Williams whilst playing in competition in Singapore in 2014.

Derek has also represented a number of sports clubs in respect of employer's liability claims; including a Premiership rugby club accused of negligence in the rehabilitation of a player after injury.

AVIATION ACCIDENTS

Derek has a growing practice being instructed in relation to personal injury claims arising from accidents aboard aircraft (both fixed wing and helicopters). Derek has dealt with Montreal convention cases together with non-Convention cases where liability for the accident is in dispute; Derek was instructed by aviation insurers for the aircraft owner in the case of Day v Tasker et al (2009) QBD, Leeds DR.

Derek has also acted for aviation companies and airports in relation to "airside" issues; e.g. he was previously a London airport in relation to an industrial illness claim (by an airside worker) involving alleged breaches of the Control of Substances Hazardous to Health Regulations.

ACCIDENTS AT SEA

Employer's Liability Claims involving accidents at sea or on-board ships; Derek has wide experiences in this niche area and has experience of cases involving the following:-

- The Shipbuilding and Ship-Repairing Regulations 1960
- The Docks Regulations 1988
- The Merchant Shipping and Fishing Vessels (Health Safety & Welfare) Regulations 1997
- Liability generally where UK regulations do not apply

CONFLICTS OF LAWS/ACCIDENTS ABROAD

For many years Derek has acted for insurers in relation to claims arising from personal injury accidents abroad and so conflicts of laws/Rome II issues are frequent in Derek's practice. He was previously Junior Counsel in a cross border case (involving catastrophic injury) where the damages claim was pleaded at over £40m and then subsequently as Leading Counsel for one of the parties in a cross border claim (resulting from an accident in France) where the damages are pleaded at an even higher figure. Derek has experience of foreign law claims involving: French, Spanish, German, Italian, Norwegian, Belgian, Serbian, Kuwaiti, Brazilian and Maltese law.

QUANTUM

Derek is involved with all quantum issues generally encountered by personal injury practitioners dealing with catastrophic injury cases. Issues which he is currently dealing with include: severe brain injury; tetraplegia and paraplegia; claimants in states of minimal consciousness; so-called subtle brain injury cases; major psychiatric decompensation consequential on severe brain injury; capacity (litigation, management of affairs and deprivation of liberty) and all issues relating to statutory funding and settlements.

Derek has drafted a considerable number of Periodical Payment Orders and has been involved in a number of cases involving PPOs for care as well as PPOs for other heads of loss. He has also been involved in (and drafted PPOs) cases where claimants have provided reverse indemnities.

FRAUD/FUNDAMENTAL DISHONESTY IN PERSONAL INJURY CLAIMS

Derek has a particular interest in fraud in personal injury cases and is instructed in cases with a (potentially) high value but where insurers consider it likely that the claim is fraudulent or fundamentally dishonest. The advent and consequences (in relation to QWOCS) of fundamental dishonesty under s. 57 Criminal Justice and Courts Act 2015 has changed the landscape in relation to how insurers deal with potential fraud in claims and Derek is regularly instructed in cases involving consideration of fundamental dishonesty.

HEALTH AND SAFETY LAW

Accidents at work/deaths at work can result in both criminal proceedings against the employer in question as well as private law claims for damages arising from the accident. Insurers tend to be involved in both proceedings and since commencement of his practice Derek's practice has always involved representing companies or individuals being prosecuted under the Health and Safety at Work Act/daughter legislation as well then acting for them in any subsequent civil proceedings (or inquests).

Derek frequently receives instructions from the employer's liability insurers of companies and individuals who are facing health and safety prosecutions in the criminal courts and he is very experienced in relation to trials in the magistrates court (e.g. *R v Bestway Coventry Magistrates Court*; a case under s. 3 of the Health and Safety at Work which involved a so-called "HTML defence") and the Crown Court with a jury (e.g. *R v Thomas* and *R v County Mall Management Limited*).

Cases in which Derek has been involved in his practice include prosecutions brought under:-

- Sections 2, 3 and 7 of the Health and Safety at Work Act etc. 1974
- The Workplace (Health Safety and Welfare) Regulations 1992
- The Manual Handling Operations Regulations 1992
- The Health and Safety (Display Screen Equipment) Regulations 1992
- The Personal Protective Equipment Regulations 1992/1998
- The Control of Substances Hazardous to Health Regulations 1988/1999/2002
- The Construction (Health Safety & Welfare) Provisions 1996
- The Provision and Use of Work Equipment Regulations 1992
- The Management of Health and Safety at Work Regulations 1999
- The Electricity at Work Regulations 1999
- The Work at Height Regulations 2005
- Lifting Operations and Lifting Equipment Regulations 1998
- Construction (Design and Management) Regulations 2007/2015
- Control of Asbestos at Work Regulations 1987/Control of Asbestos at Work Regulations 2006/2012

GROSS NEGLIGENCE MANSLAUGHTER/CORPORATE MANSLAUGHTER

Derek is one of the few Counsel who has acted in both a gross negligence manslaughter case (*R v English Brothers*, Northampton Crown Court) and a corporate manslaughter case (*R v Cavendish Masonry*, Oxford Crown Court) and he is currently instructed in two such cases.

INSURANCE

Derek has considerable experience in disputes arising by reason of fraud/material non-disclosure/misrepresentation in insurance claims. He has represented insurers in a number of such cases which have proceeded to trial (e.g. *Savash v Co-Op General Insurance*) and which have dealt with the following:

- Presentation of fraudulent documents/use of fraudulent devices in support of claims.
- Presentation of fraudulent claims
- Material non-disclosure in claims
- Material non-disclosure/misrepresentation in insurance proposals.

He is currently involved (for insurers) in a number of such ongoing cases.

Derek has also been instructed in disputes involving policy coverage issues. Cases in this area include insurers refusing to provide public liability cover to a footballer who recklessly injured a fellow player, insurers refusing to provide public liability cover to an insured who injured a friend whilst engaging in horseplay with an air-rifle and insurers refusing to provide cover in respect of a fire which had been wilfully/recklessly started.

ROAD TRAFFIC ACT/MOTOR INSURANCE ISSUES

Derek is frequently instructed by motor insurers in relation to policy coverage issues/issues under the Road Traffic Act 1988 and potential Art 75 status. He has extensive experience of cases where insurers have Art 75 status and/or where the MIB are involved and indeed has assisted insurers on numerous occasions with submissions to the Technical Committee of the MIB.

CIVIL LIABILITY

PRODUCT LIABILITY

Derek has been regularly instructed over the years by insurers in product liability claims; the cases he has been involved in range from being instructed in the “the toxic leather Sofa” Group Litigation (acting for one of the many defendants) to acting for the manufacturers or suppliers of: bicycles, plumbing equipment, air hoses, butane gas canisters, baby changing stations, televisions, truck tyres, car tyres, motorcycle tyres, bicycle tyres etc.

GROUP LITIGATION/MASS LITIGATION

Derek was instructed in the “the toxic leather Sofa” Group Litigation (acting for one of the many defendants) and is currently instructed as Leading Counsel in relation to the claims (including personal injury and property damage) arising from the New Ferry explosion in 2017.

CASES

NOTABLE DECIDED CASES

PERSONAL INJURY

Idris Farah (By His Litigation Friend Fatuma Mohamad) v (1) Ahmed Abdullahi (2) Probus Insurance Co Europe

Dac (3) – (4) Eui Ltd (5) Motor Insurers’ Bureau [2020] EWHC 825 (QBD) Linden J

Identity of the driver of one of the vehicle’s involved in the collisions; liability of EUI Ltd; causes of the Claimant’s brain injuries; novus actus interveniens; divisibility of brain injury.

Harris v Bartrum [2020] EWHC 900 (QBD) Sir Robert Francis

Liability of an employer to employee who suffered catastrophic injury when the articulated lorry and trailer which he had been employed to drive rolled over him.

Jagger v Holland & 2 Ors [2020] EWHC 46 (QBD) Geoffrey Tattersall QC

Liability of various parties to a pedestrian walking through premises (a public common) where a fairground was being set; the Claimant suffered catastrophic injury when she was crushed by a large goods vehicle.

DXW v PXL [2019] EWHC 2579 (QBD) Pushpinder Saini J

Approval of a settlement agreement where the Claimant’s litigation friend sought an order approving a settlement (the terms of which were to be kept from the claimant).

Newham LBC v Arboleda-Quiceno [2019] EWHC 2660 (QBD) Lambert J

Appeal against a Master’s refusal to allow the Defendant to resile from a pre-action admission of liability

Clive Bellman (A Protected Party By His Litigation Friend Nick Bellman) v Northampton Recruitment Ltd [2019] 1 All ER 1133 (CA)

Appeal against first instance decision: Vicarious liability of a company for an assault committed by its director on a fellow employee in a drinking session some hours after the conclusion of the work Christmas party

Matthew Robinson v Abellio Greater Anglia Ltd (T/A Abellio Greater Anglia) [2018] EWHC 272 QBD

Train operating company not liable for the injuries sustained by a commuter who fell between a moving driver-only train and a platform edge when he was jogging alongside it.

Robert Mathew Rickson v Nipour Bhakar [2017] EWHC 264 QBD Blake J

Finding of 20% contributory negligence was made against a cyclist who was injured in a road traffic accident; the cyclist was on the major road when the defendant negligently turned across his path.

Clive Bellman (A Protected Party By His Litigation Friend Nick Bellman) v Northampton Recruitment Ltd [2016] EWHC 3104 QBD: [2017] ICR 543

Vicarious liability of a company for an assault committed by its director on a fellow employee in a drinking session some hours after the conclusion of the work Christmas party.

English Heritage v Taylor [2016] EWCA Civ 448 [2016] PIQR P14, CA

Liability of English Heritage under the Occupiers’ Liability Act 1957 after a visitor fell into the moat at Carisbrooke Castle.

Landau v (1) Big Bus Co Ltd (2) Zeital [2014] EWCA Civ 1102, CA

Liability of car drivers in relation to motorcyclists attempting to ride between them at a junction.

Ian David Groves (By His Mother & Litigation Friend June Groves) v (1) Jonathan Studley (2) Zenith Insurance Management UK Ltd [2014] EWHC 1522 QBD (Stewart J)

Liability and contributory negligence issues in a case where the claimant jumped onto the bonnet of the defendant's car following an altercation.

Allen-Donald v Breedon [2011] QBD

Liability of employer under the Workplace (Health, Safety and Welfare) Regulations 1992; employee injured slipping at work subsequently developed adjustment disorder / chronic pain resulting in her becoming wheelchair bound.

Orchard v Lee [2009] EWCA Civ 295

Liability of two teenage school pupils to a school supervisor injured by the one of the boys in the course of a game of "tag" between the boys. Derek represented one of the children and the case against his client was dismissed at first instance; the claimant appealed against the judgment in respect of the other child and her appeal was dismissed.

Khambhaita v Lewis (2009) QBD

Liability of a driver to a pedestrian emerging onto road at a traffic light green in favour of the driver; the pedestrian was catastrophically injured. Liability apportioned 50/50 by the Court.

Collins-Williamson v Silverlink Trains [2009] EWCA Civ 850, CA

Liability of train operating company to a passenger injured by falling from station platform under a moving train.

Jennings v Forestry Commission (CA) [2008] EWCA ICR 988, CA

Liability of Forestry Commission to a contractor, including consideration of the employment status of the contractor and the Provision and Use of Work Equipment Regulations 1998.

Lough v IDS [2008] EWCA Civ 1009, CA

Liability of occupier of domestic premises to employee of an independent contractor carrying out work on the premises

Mills-Davies v Royal Society for the Protection of Birds (QBD) 2004

Liability of occupier of a bird sanctuary to a visitor seriously injured when falling onto a small tree stump on a path (created by works carried out by occupier to clear a path in the sanctuary)

MacLellan v Forestry Commission (QBD) 2004

Liability of occupier (of a forest adjacent to the River Wye) to a visitor seriously injured when hit by a falling tree

Grant v Dick [2003] EWHC 441, QBD

Liability of driver to a pedestrian running out onto a dual carriageway

Barry v Wynn [2001] EWCA Civ 710, CA

Liability of driver overtaking a stationary bus causing injury to a pedestrian

CROSS BORDER CLAIMS

RXA v L'Equipe SA (QBD) [2014]

Extremely high value claim (pleaded in excess of £40m) following an accident in France. French Law and Rome II applied.

ACCIDENTS AT SEA

Davis v Stena Line Ltd (QBD) [2005] 2 Lloyds Rep 13

Extent of commercial ferry operator's duty and causation issues in attempted rescue in adverse weather conditions.

AVIATION ACCIDENTS

Day v (1) Tasker (2) Multiflight Ltd (3) Kennett [2009] QBD

QBD, Leeds District Registry: liability and quantum issues arising from the crash of Schweizer 269C helicopter G-TASS in the Lake District on 10 May 2004

INSURANCE

Sozem Savash v Cis General Insurance Ltd [2014] EWHC 375 (TCC) Akenhead J [2014] Lloyd's Rep IR 471

A household insurance claim for loss and damage arising from a burglary was dismissed as fraudulent where the insured had given inconsistent accounts as to whether the property was occupied at the relevant time; his claim regarding the items allegedly stolen was inherently incredible; and there was evidence that a claim for remedial works had been substantially exaggerated.

COSTS

Onay v Brown 10 June 2009 (2009) EWCA Civ 775

Costs and Part 36 issues arising from acceptance of an offer where primary liability had been admitted in a road traffic case

RECOMMENDATIONS

Derek was named 'Personal Injury & Clinical Negligence Junior of the Year' at the Chambers and Partners Bar Awards 2012. In 2013, 2014, 2015 and 2016 he was a "Star Individual" in the Chambers and Partners Personal Injury ranking for Juniors. He took Silk in 2016 and is ranked as a Leading Personal Injury Silk in both Chambers and Partners 2021 (Band 1) and Legal 500 2021. He was also ranked a leading Silk in Health and Safety in the Legal 500 2017.

Quotes

"A standout silk who regularly appears in high value catastrophic injury cases. He elicits stellar market praise for his technical ability and client care as well as his handling of fraud allegations. He is one of the few barristers to have

been instructed in a corporate manslaughter case". "A very smooth advocate who wins everybody over with persuasion". "A master tactician and strategic thinker who is always on his game. The depth and breadth of knowledge across a wide range of issues is second to none". Chambers and Partners 2018- 2021

"Phenomenally good, his pleadings are a work of art." "He's completely on the ball excellent with clients and an excellent all-rounder". "Excellent relationships with the lay clients and very good at handling expert witnesses". Chambers and Partners 2017

"Excellent and charismatic; a fighter" Legal 500 2017

"He never loses sight of commercial reality" Legal 500 2017

"Has an outstanding reputation for expertise in EL/PL and RTA claims". "He is an excellent negotiator, is very good on pleadings and is very thorough on counter schedules. "He's a real character, full of strength and knowledge". "He is wonderfully charming, he combines a good mastery of detail with a degree of personal charm to get results". Chambers and Partners 2016

"A highly accomplished advocate". Legal 500 2016

"A robust barrister, who is excellent both in court and on paper" Legal 500 2016

"Great fun to work with, he shows excellent attention to detail and is a very bold negotiator and tactician." Chambers and Partners 2015

"He is a terrific advocate and clients love his down-to-earth, no-nonsense approach." Legal 500 2015

"He has an ability to condense and communicate important issues in an exceptionally clear way." Legal 500 2015

"A high level of pragmatism, attention to detail, and an ability to communicate issues exceptionally clearly." Legal 500 2015

"One of his real fortes is cross-examination – he's like a dog with a bone. He's definitely one of the stars at the chambers, and it's hardly a shoddy set." "Not only is he exceptionally knowledgeable, but he also stands up in a fight. He's extremely approachable too." Chambers and Partners 2014

"Fantastically good with clients," the "pugnacious" Derek O'Sullivan "fights tooth and nail for his client" but never loses his "down-to-earth style." His "realistic assessment of the chances of success" is lauded by clients. Chambers and Partners 2013

"The absolutely first rate" Derek O'Sullivan has the "ability to get right to the crux of the issues at a very early stage". He combines a formidable legal mind with "strong social and technical skills". Such qualities serve him well both in the Courtroom and when generally dealing with lay clients: Chambers & Partners 2012

The 'very down-to-earth and pragmatic' Derek O'Sullivan; Legal 500 2011 (Health and Safety)

Derek O'Sullivan is 'excellent at cross-examination': Legal 500 2011 (Personal Injury)

He is also applauded for his "clear and concise presentation of evidence and excellent summing-ups." Chambers & Partners 2010

Both thoroughness and client relationship skills are also described as being among Derek O'Sullivan's qualities Chambers & Partners 2010

"Derek O'Sullivan can be a street-fighter when you need one – he's tough as old boots when the case dictates,"
Chambers & Partners 2009

"This senior performer litigates a wide variety of cases, and is a "confident, experienced advocate who cuts to the real issues very quickly and is extremely commercial." Chambers & Partners 2009

"one of the finest juniors around" Legal 500 2009

MEMBERSHIPS

- Personal Injury Bar Association

QUALIFICATIONS

BA (Dunelm)

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