

Malcolm Duthie

Serious Injury



Year of Call: 1989

Email Clerks: mt@no5.com

Malcolm practices exclusively in the fields of personal injury and clinical negligence litigation, with over 30 years' experience.

Personal Injuries

- Substantial experience in high value catastrophic injury claims arising from industrial, non-industrial and road traffic accidents, including brain and spinal injuries, severe orthopaedic and internal organ injuries, amputation and gross disfigurement, proceedings on behalf of children and protected parties and Mental Capacity Act issues.
- Claims involving rare but recognised complications including fibromyalgia, conversion disorder, CRPS, pain amplification syndromes, Munchausen's, functional disorders.
- Fatal Accident Act claims.
- Recently successful in the Court of Appeal.

For further and greater detail of experience and areas of work see Personal Injury and Clinical Negligence profiles.

Recommendations

"Malcolm is excellent in pulling defendant witnesses apart." "Malcolm is technically brilliant."

Chambers UK 2024 (Personal Injury)

"Malcolm is a very experienced, passionate and talented advocate. He puts his all into his cases and on behalf of his clients."

Legal 500 2024 (Personal Injury)

"Malcolm is an incredibly able lawyer who is superb at handling the most complex of issues." "He is brilliant with challenging cases and has fantastic attention to detail."

Chambers UK 2023 (Personal Injury)

"Malcolm is very good with both clients and experts and is able to drill into the detail of the case and address the central issues in a way that all clients can understand. His advocacy is meticulous in its preparation and delivery. He consistently performs well in complex negotiations and does not get drawn into needless posturing, always remaining calm and measured when putting the client's case. He is tenacious and ensures the best possible outcomes."

Legal 500 2023 (Personal Injury)

"He has a great eye for detail and inspires confidence." "Very intelligent and always extremely well prepared."

Chambers UK 2022 (Personal Injury)

"Malcolm is very astute. He grasps incredibly complex issues and is good at explaining these to clients. Nothing seems to faze him. He is not afraid to run tricky cases and his depth of knowledge and approachable manner make him a valued asset to any legal team."

Legal 500 2022 (Personal Injury)

"Very thorough and astute." "He is absolutely on the ball, takes no nonsense and delivers great results."

Chambers UK 2021 (Personal Injury)

"Extremely persistent on behalf of clients, always pushing for the best outcome."

Legal 500 2021 (Personal Injury)

"An excellent advocate; he is persuasive in court and expresses himself very well on paper. He clearly has a very sharp mind." "Impeccably prepared and a real fighter, so he's good to have on your side in a contested issue." "He is methodical and gets to grips with the issues of the case quickly."

Chambers UK 2020

"Tenacious in court and at mediation."

Legal 500 2020

"He is very intelligent, articulate and a skilled advocate. He grasps complex issues well and deals with the more challenging clients with considerable diplomacy."

Chambers UK 2019

"His broad practice includes industrial disease, catastrophic injuries and public liability claims."

Legal 500 2019

Notable Cases

B -v- A [Jan 2021]:

Bus driver sustained complex fractures to lower limb: as a result of chronic pain and disability, C wanted to undergo an elective below-knee amputation to improve pain and functioning a procedure resolutely advised against by D's medico-legal experts. Before C underwent any further surgery, case settled at JSM for £1.65m gross.

HS -v- MB [Dec '20]:

RTA. Represented young female beautician who sustained complex and very severe combination of multiple lower limb fractures, scarring and psychiatric injuries. Settlement of £1.6m.

IK -v- RS [Jan '20]:

Pedestrian run over by HGV at traffic light-controlled crossing, sustaining horrifying traumatic high trans-humeral amputation. Liability settlement. Quantum ongoing.

KB -v- NH [July '19]:

brain injury. RTA: no collision but D pulled out into young motorcyclist's path. Settlement £1.35m after JSM. Latterly with James Rowley QC.

SW [Feb 2019]:

RTA. Most serious injury ununited humeral fracture, needing reverse shoulder replacement but ongoing disability due to damage to rotator cuff and axillary nerve. Attempt to improve movement by rare pectoralis muscle transfer surgery in USA unsuccessful. Settlement at JSM

PA v E Ltd [Dec 2018];

C when standing on "live-lane" hard shoulder of M42 struck by approaching HGV, sustaining multiple injuries. Settlement at mediation.

MA v SH [Dec 2107]:

unrestrained passenger in taxi. Multiple severe injuries including subtle but debilitating brain injury. Settlement at JSM GBP 1.5m

TB v PMA Logistics [May 2017]:

Accident at work when hook struck young claimant who suffered permanent blindness in one eye. Bespoke moulded ocular prosthesis fitted although the prospect of future enucleation could not be excluded. Settlement following JSM

Baker v KTM Sportmotorcycle UK Ltd [2017] EWCA Civ 378:

Manufacturer found liable under the Consumer Protection Act 1987 in circumstances where Claimant thrown from motorcycle after brakes unexpectedly seized. Court of Appeal upheld first instance decision.

RN v DN and others [March 2017]:

Teenager ejected from Orbitor Extreme fairground ride at Knebworth, sustaining severe injuries including laceration of the aorta and multiple fractures. Settlement achieved against uninsured Ds.

ZS v H [Dec 2016]:

RTA. Fractured left ankle, peroneal palsy, foot drop, leading to fusion surgery which failed to provide any real benefit, resulting in decision to undergo trans-tibial amputation. Claims for loss of earnings, prosthetics (BIOM foot), care and accommodation. Settlement at JSM pre discount rate review.

Deighton v Collett [Jay J on appeal from HHJ Denyer QC LTL 21/4/16]:

Multiple collisions in one RTA. Whether a C is permitted to bring a separate action after another party had already been to trial.

Baker v KTM Motorrad [8.5.15 Lawtel]:

Manufacturer found liable under the Consumer Protection Act 1987 when Claimant thrown from motorcycle after brakes seized.

DW v HJ (2015):

RTA. Brain injuries resulting in borderline vegetative/minimal awareness state. Settlement 900,000 gross lump sum and PPO of 120,000 pa., approved by Master Leslie; with Gerard Martin QC

RS v AA [March 2015]:

pedestrian RTA, brain injuries. Settlement of liability 76/24% and damages 2.1m gross, approved by Wilkie J.

Milroy (a protected party) v British Telecommunications Plc [2015]EWHC 532 Davis J.(also Lawtel/Lexis

Hoist operative sustained severe electric shock injuries, including brain injury, on coming into contact with live 11Kv overhead power lines. Employers found liable and 1/3rd contributory negligence.

S v W [Jan 2015]:

Brain/psychiatric injury to teenager thrown from bonnet of car during horseplay. Liability, causation and quantum issues. JSM settlement 750,000.

M v B [Oct 2014]:

Below knee amputation. Settlement following JSM 1.75m

PB v NR [June 2014]:

RTA subtle brain injuries and psychological effects. Retained earning capacity. Settlement 800,000.

Michael Anthony Burt v Linford Christie [LTL 10.2.14]

J v M (Northampton CC Oct 2013):

Acted for 17 year old who stepped out of a moving taxi, sustaining brain damage. Liability contested. Finding of primary liability against the taxi driver with 2/3rds contributory negligence.

Robbins v Highways Agency v EnterpriseMouchel [2012]:

RTA on A30 during extreme wintry weather on the A30 Cornwall/Devon-47 accidents. This the only claim brought. C sustained severe fractures. No loss of earnings. Liability denied. Settlement 85,000.

O'Hara v MIB [2012]:

Paraplegia and brachial plexus injuries. Evidence that all other passengers in the car knew it was stolen and/or driver disqualified. JSM settlement 2.25m.

Bowles [2011]:

RTA, severe brain injuries and internal injuries. Settlement 4m net of 25% contributory negligence; with Paul Bleasdale QC.

Player v Hart [2011]:

RTA leg and shoulder injuries. Risk of further deterioration/amputation- settlement 500,00. Instructed by Dolmans, Cardiff.

Du-Monte Davies v Bell [2011]:

RTA - brain injury. Settlement 1.5m lump sum plus PPO 125,000 pa; with Chris Bright QC.

Maudlin [2011]:

RTA - brain injury, hemiparesis-settlement: 1.1m lump sum plus PPO 23,255 pa; with Stephen Killalea QC.

Palmer v Nottinghamshire CC [2011]:

Brain injured driver- car skidded on excessive and loose grit/stones on highway. Settlement- 45% apportionment in favour of C and lump sum of GBP 788,000; with Paul Bleasdale QC.

Jaciow v BMW (2010):

Severe crushing injury to leg, including fractures and venous and artery damage. Settlement at JSM 775,000.

Reported Cases

Powell v Auden (2009 EWHC 98 (QB))(Sir Robert Nelson):

Collision between two motorcycles on country road. Severe multiple injuries and brain damage.

Clamp v Angel (June 2008):

RTA brain and psychiatric injuries- settlement GBP 900,000. Instructed by Berrymans Lace Mawyer; with Stephen Grime QC

Lisa Gunn v MIB (2008):

RTA - untraced driver. Fractured spine resulting in incomplete hemiplegia. Settlement by agreement: Lump sum GBP 1.5m and periodical payments of GBP 66,000 p.a.

Aitken v Johnson's of Henley (2007):

RTA involving motorcycle and bus. Claimant sustained very severe brain damage. Issues of liability and quantum. Significantly reduced life expectancy. Future care funding issues concerning local authority and PCT

Pace v Swansea City and County Council (Lawtel Recorder Andrew Keyser QC 10.7.07):

Ice on the highway – duties under S41 (1A) Highways Act 1980.

Coroner's inquests: Examples of inquests attracting wide, or at least local, publicity in the matters of:

Gordon Williams (Dec'd) (July 2003):

collision with ambulance on allegedly defective road (Powys).

Malcolm Craig Lucas (Dec'd) (June 2006):

legal executive drowning in Swansea Marina/River Tawe (Swansea).

Ian Glyn Jones (Dec'd) (April 2007):

Barinder Lal (Dec'd)(Oct '13):

death in Sauna at leisure centre [Gravesend]

Rachel Douglas(Dec'd)(Nov '14):

teenager placed with foster carers [Peterborough]

Mrs Carol Vaughan(Dec'd) (Jan '15):

voluntary mental health patient[Nottingham]

Re S.B. [Dec'd] (June '15):

teenager placed with foster parents. [Milford Haven]

Re DB. [Dec'd] (Feb 2019):

teenager placed in temporary foster care [Haverfordwest].

Motorsport:-

Wattleworth v (1) Goodwood Road Racing Company Limited; (2) RACMSA; (3) FIA (2004) EWHC 140 (QB):

acted on behalf of the Goodwood Motor Racing Circuit, brought by widow of Deceased whose Austin Healey collided with the circuit's tyre barrier.

Johnson v Brands Hatch Leisure Limited and Others (2005) HC QB Division):

accident at Barn Corner, Cadwell Park during Aprilla RS 250 Championship. The Claimant struck a recticel foam barrier and rebounded onto the track.

Rees v British Racing and Sports Car Club (8th/9th March 2007 Luton County Court):

accident at Brands Hatch when a Lotus sports car overturned during a towing operation.

Brown v Leisure Motorsports Services Ltd (Newcastle County Court 5/6.2.08):

Corporate activity day quad bike accident.

Leat v Portsmouth Motocross Club Ltd (Swindon County Court 11/12.6.08):

BSMA Team event. Claimant riding 250cc motorcycle. Trackside rope became entangled within rear wheel. Motorcycle halted in mid-air. Fractured spine.

Douglass v Premier Events (Newcastle CC 4.6.08):

corporate activity day quad bike accident

Hyde v Darley Moor Road Racing Club Ltd (Telford CC 14.11.08):

test day, older boy on larger motorcycle collided with younger less experienced Claimant

Green v Sunset and Vine and BARC and Goodwood Road Racing Company Ltd [2009] EWHC 1610(QB) (Ouseley J.) [2010] AER (D) 193; [2010] EWCA 1441:

Maserati struck road camera at Woodcote Corner during Revival Meeting. Accident caused by driving of the Claimant.

Hunter v Cusses Gorse [2011-Winchester CC]:

moto cross incident when Claimant struck by a following bike. Fractured spine.

Mercer v Countrywide Special Events v BAE [Guildford CC 7.11.11]:

corporate day. C. injured driving a "Snoo-kart". Issue of responsibilities of organiser versus employer.

Corbett v Cumbria Kart Racing Club and ors [2013] EWHC 1362:

collision between side-car outfit and ambulance; with Graham Eklund QC

Starmer v Trent Raceway [December 2017]:

banger race collision. Claim discontinued shortly before trial. Issues with regards to costs and unreasonable conduct ongoing.

Knell v Eastwood [June 2018]:

marshal struck by rally car

Staples v ORCi [May 2021] [Stacey J.]:

Banger race at Arena Essex Raceway. C driver alleged he was "followed in" and struck fence. C discontinued after day 1 of trial.

Memberships

Personal Injuries Bar Association

Qualifications

LLB (Hons) LLM (London)