



## expertise and experience

Professional Indemnity - April 2009

### Professional indemnity

#### Introduction

**We have a dedicated team of experienced professional negligence and insurance lawyers specialising in defendant work based in our Cardiff office who can consistently provide advice of the highest standard in a friendly and client focussed way. We pride ourselves on the quality of the service we provide to insurers and to the insured.**

**The team's objective is always to work together with both insurers and the insured to resolve litigation and disputes as fairly, economically and sensitively as possible taking into account the clients' views.**

**We regularly act in claims throughout England and Wales on behalf of a number of insurer clients.**

Chambers and partners UK 2007 Guide stated:

Described as having "sewn up the Welsh market for solicitor defence work," this Cardiff team has a noted presence in the professional indemnity arena and can also be seen representing accountants and design and construction professionals.

Another growing area of the practice is advising insurers on coverage issues. Clare Hughes-Williams is the most widely known partner on the team, and peers outside Wales reported: "Insurers often say we should refer to her when we have conflicts." The team acts for clients insured by a number of leading market insurers

Morgan Cole is a substantial litigation practice and we are also able to obtain assistance from other members of the firm with a range of legal expertise including the family team, the commercial team and the employment team- members of all of these teams are always willing to assist and to lend their expertise.

We have also, in the past, been faced with large and complex property claims and worked with our property colleagues whose experience in dealing with property related matters has been invaluable.

The team has a wealth of experience in high and lower value cases. We regularly mediate matters and are always looking for sensible and alternative ways to resolve a dispute without the need for trial. However, where trial is necessary, all members of the team have experience in taking matters through to trial and members of the team have been involved in a number of reported cases including:

- Veitch v Avery [2008] PNL7
- Charles v Hugh James [2000] LRP207(CA)
- Hamilton Jones v David & Snape [2004] 1 ALL ER 657
- Havenledge v Graeme John & Partners
- Straker v Tudor Rose

Our dedicated team offers a high level of legal expertise and an in depth knowledge of professional negligence litigation and the problems faced by legal advisors and the claims that may arise. Many years of experience have taught the senior members of the team how best to deal with insureds in difficult scenarios and how to work as a team with Insurers.

We pride ourselves on the common sense and commercial approach that we take to claims, the friendly and hardworking nature of the team members and the consistently good results that we obtain for clients.

#### Our expertise

The team has a wide range of experience in all different sorts of cases.

Examples of our cases include:

- Acting in multi party litigation, for a solicitor insured, who had been involved in a chain of property transactions on behalf of the first defendant, an alleged Iranian princess living in North Wales. The



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Claimant, her former 'common law' husband, alleged that she had conspired with the solicitor to defraud him of the properties. The defence of the solicitor was hampered by the fact that he had been to prison for stealing client monies and his reputation was effectively non-existent. We were able to settle the case against the solicitor shortly before trial for a costs inclusive figure leaving the Claimant and his former 'wife' to fight it out- the 'wife' turned out to be a master forger who had created documents throughout the period over which she was involved with the Claimant and throughout the litigation.

- Acting on coverage for insurers where just under £1million had been removed from client account by an accounts clerk with a criminal conviction for theft. Considering issues of dishonesty of the partners, the validity of the partnership and the relevance of recklessness to the issue of dishonesty and the right to reject the policy.
- Acting on behalf of a solicitor insured who had been involved in assisting a mother and daughter on a conveyancing transaction where the daughter agreed to assist in the purchase by signing the mortgage but was not intending to make any contributions towards the mortgage or the maintenance of the property. The transfer recorded that the couple were to be joint tenants. When the mother tried to sell the property later to buy a new property, the solicitors acting again tried to mediate an agreement between the two to persuade the daughter to agree to the transfer and the mother to agree that the daughter would have a continued interest. The solicitors released all the monies to the mother who then went to a new firm of solicitors and purchased the new property without telling them of the agreement that the daughter would have a continued interest. The daughter sued the original solicitors. We were able to persuade the daughter to discontinue based on arguments about unjust enrichment.
- Advising insurers on whether an insured firm of brokers was covered under their policy in a potentially highly significant sized claim against the firm by one of the major building contractors in respect of whether the Insured had properly notified the claim.
- Dealing with allegations of bullying and failure to identify dyslexia made against schools.
- Successfully defending a firm of architects who are seeking payment of their fees and were met with a counter claim in respect of allegations that they had

failed to ensure that the plans drawn up for a development properly met the local authority's requirements and the customer's wishes to maximise the revenue.

- Advising Lloyd's insurers on specific coverage issues such as moral hazard, material non-disclosure, the appropriateness of notifications and allegations of fraud.

## **Our service delivery**

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As far as our relationships externally with clients are concerned, we take the view that the following are central to the smooth running of any relationship:

### **Communication**

We take the very firm view at Morgan Cole that communication is the key to good client relationships. That applies not only as between Morgan Cole and the insurer but also between Morgan Cole and insureds.

Equally, we believe that it is extremely important that the appropriate Claims Solicitors or handlers are aware at all times of the progress of the claim. We believe that it is important to deal with the claim promptly upon receiving instructions and to provide our first report with a clear analysis of the claim quickly and cost effectively to insurers. We also believe that that report should contain clear and practical recommendations as to how best to manage the claim.

### **Our fees**

We strive to contain the amount of our fees. Our costs rarely exceed the costs of our opponent and we do try hard to ensure that the steps that we recommend should be taken in relation to any case are proportionate to the level of the claim. We believe that it is fair to measure us against results that we achieve.

Clients tell us we provide excellent value for money.

### **Reserves**

We recognise that, for all insurer clients, the accuracy of the reserving information is key. It goes without saying that this is one of the most difficult areas to advise upon particularly since the advent of Conditional Fee Agreements and the effect that those agreements have had on the level of claimant solicitors' costs but we strive to provide accurate reserves as far as possible.



## Our people

### Meet the team



**David Mortimer**

Partner

T: 029 2038 5907

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David joined Morgan Cole in 1983 and has been a partner since 1985. David's main areas of practice are professional indemnity litigation and professional conduct work including not only the investigation of complaints of professional conduct, but also advocacy at tribunals.

David's professional indemnity expertise includes the defence of professional negligence claims against doctors, solicitors and educational professionals. As well as David's professional work, he also fulfils a significant management role as the Team Leader. David is a trained mediator.



**Clare Hughes-Williams**

Partner

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Clare trained with Morgan Cole. She qualified into the Professional Indemnity Team at Morgan Cole in 1990 and has been a partner since 1998.

Clare has handled a large number of claims against a wide range of professionals including quantity surveyors, surveyors, brokers, accountants and architects. She also has particular expertise in claims against solicitors.



**Claire Rawle**

Partner

T: 029 2038 5532

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Claire Rawle is a partner in the team. She trained with the firm and was admitted in 1992.

Clare is a specialist advocate and her national practice consists of all aspects of contentious matters involving health, safety and environmental legislation. She provides a 24hr Critical Incident Response service for her clients and her work includes managing their response to a critical incident; advice/representation at interviews under caution; support throughout the course of a joint investigation by Police and/or the Regulator; representation at Coroners' inquests; defence of criminal prosecutions brought by CPS and/or the Regulator; and the conduct of appeals against Enforcement Notices.

Claire has devoted a considerable amount of her time over the last 12 months to raising awareness in relation to the Corporate Manslaughter Act 2007 and the provision of bespoke training for boards and senior management teams.



**Robin Havard**

Partner

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Robin is presently the Chairman of the firm. He was also the first solicitor in private practice in Wales to gain Higher Rights (All Proceedings) qualification in 1995.

He is a member of the Solicitors Association of Higher Court Advocates and a member of the Prosecuting Panel for the Solicitors' Regulation Authority. His membership of the Prosecuting Panel provides him with unique experience in relation to the disciplinary procedures of the Law Society and, as a result, he now receives instructions from a number of insurers to act on behalf of solicitor insureds who have found themselves the subject of disciplinary proceedings.

Robin also prosecutes, on behalf of the Health & Safety Executive.



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**Joanna Makin**  
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Joanna is a Senior Associate who joined the team in May 2007. She has many years of experience dealing with defendant professional indemnity insurance work that she gained at her previous firm, Beachcroft LLP.

Joanna has extensive experience of defending solicitors on behalf of their insurers. She also has experience of acting for Lloyds Underwriters and other insurers in defending claims against professionals including brokers, surveyors, accountants, licensed conveyancers, barristers and educational professionals. One of Joanna's particular specialisms is advising insurers in relation to coverage issues and policy disputes.



**Alison Huckle**  
Associate  
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Alison is an Associate who has worked for Morgan Cole since qualifying in 1987. Her areas of practice include professional indemnity claims against solicitors and other professionals including architects and insurance brokers. She also has extensive experience of high value clinical negligence and personal injury claims.

Alison has direct recent experience of working with community groups including a playgroup and after school. She has a keen interest in all aspects of educational law and is herself a Chair of Governors of a primary school and a Parent Governor of a large comprehensive school.

Alison has also handled investigations into fitness to practice cases involving nurses



**Sarah Armstrong**  
Associate  
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Sarah is an Associate who joined the team in January 2009 from Beachcroft LLP. She has substantial experience dealing with defendant professional indemnity insurance work across a range of professions including insurance brokers, underwriting agents, surveyors, architects, solicitors and accountants. Sarah has spent time on secondment with a leading professional indemnity insurance provider in London and has been responsible for supervision and training of a team of claims handlers dealing with claims against a range of professionals.



**Catrin Davies**  
Senior Solicitor  
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Catrin qualified as a solicitor in September 2004, having trained with Morgan Cole, and won the Western Mail "Trainee of the Year" award in November 2004.

Since qualification, Catrin has acted on a range of professional negligence claims.

Catrin has experience of claims against accountants, doctors and nursing professionals. In addition, she has recently spent nine months seconded to an insurer client and has significant experience of handling solicitors' negligence cases and the way claims are handled by insurers.