



NEW SQUARE

## Graham Eklund QC

### Education

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Year of Call: 1984

Year of Silk: 2002

## Profile



Graham has a broad ranging and thriving civil and commercial practice, with a particular focus on insurance and reinsurance claims, where he specialises in defending insurers against fraudulent claims and acting on other claims where there are policy coverage issues. He has a substantial practice in product liability and property damage claims. His professional negligence practice focuses on claims relating to insurance brokers and financial advisors. In relation to personal injury claims, he predominantly deals with catastrophic injuries and claims where there is a principle of law in issue as to liability.

He has a friendly client focused approach, but is regarded as a tough operator who is not shy of the detail in a case and as a barrister who will fight his client's corner tenaciously.

Graham has long been recommended as a leading Silk in the legal directories (Chambers UK Bar, Legal 500 and Who's Who Legal: UK Bar). In the 2015 edition of Chambers he is recommended in four categories – insurance, product liability, professional negligence and property damage ([click here](#) to view Graham's profile).

In Chambers 2017 he is praised for being: "someone you want on your side when something gets a bit knotty", "client-friendly and an excellent advocate", "he's absolutely superb and a pleasure to work with - a really, really sharp man", "he sees the heart of the issue immediately and never loses focus", "he enjoys a tremendous popularity based on his thorough application to his instructions, his courteous style and his great client awareness", "his legal skills are first-rate and he's also calm and unflappable which instills confidence", "clients value his direct, no-nonsense approach and judgement."

Chambers 2016 included:

"a very calm and collected performer, who is unruffled in court. He presents a case in a very measured way and often with success. He is a formidable opponent.", "he's incredibly user-friendly from a solicitor's perspective. He is good at working as part of a team and you receive a cradle to grave service", "he is very bright, able to cut through extraneous detail and very good on his feet."

Chambers 2015 included:

"Fights for the insurer and really looks after their interests", who is "a formidable opponent", whose "direct, no-nonsense approach and judgement is valued", who "is very good at getting to the heart of the issues and not being distracted by a large volume of information" and "who has handled a number of catastrophic fire cases" and has "very good judgement, gives very clear advice and takes a robust approach".

Who's Who Legal: UK Bar 2015 record that he is "first and foremost a sensational trial advocate" a "hard nosed man" who is a "go to Silk for insurers".

The Legal 500 describes him as "clear thinking and entirely unflappable" with "a courteous but incisive style" (2016). He is "The go-to counsel on policy wordings" and that in respect of product liability he "Features regularly in insurance-related claims." For professional negligence claims it records he "Goes beyond the call of duty for clients" and he has "An impressive breadth of knowledge and extremely good client handling skills." For personal injury cases he is "Recommended for road traffic and workplace accidents" (2015).

In his insurance practice, Graham acts for a wide range of major insurers, both in the company market and the Lloyd's market. He has particular experience in representing insurers on coverage issues (policy interpretation, misrepresentation and non-disclosure, breach of condition/warranty and fraud). Many of his cases in this area have been reported.

A particular speciality is fraud. He has been conducting fraud trials for 25 years and is noted for his judgment and ability in this area, having conducted a large number of trials where he has successfully established fraud on the part of the insured. In a recent very unusual case when acting for Aviva, he established that the claimant/insured had submitted a fraudulent claim to an earlier insurer (NIG) and that the fraudulent claim on NIG was a material fact which ought to have been disclosed to Aviva. NIG itself had not alleged or proved fraud when dealing with the claim made to it.

His product liability practice embraces claims in respect of serious damage caused by fires, many of which have been caused by the failure of electrical items or defective electrical installations. Recent claims also include the failure of gaskets in medical products, the failure of silicone breast implants and the use of a fungicide (dimethyl fumarate) as an anti-mould agent in the use of leather furniture. He has experience of claims arising from failed agricultural crops and the use of faulty fertiliser for the growing of crops.

Graham's busy property damage practice involves both recovery actions and defending substantial claims against insureds. Examples include fires in a waste processing centre (£10 million), a paper storage warehouse (£13 million), an industrial estate (c£25 million) and a copper manufacturing plant (£15 million).

He undertakes professional indemnity work, particularly claims involving insurance brokers and financial advisors. His extensive insurance practice and experience makes him ideally placed to act in these fields.

Graham's personal injury practice is focused on catastrophic personal injury claims, especially those arising out of motorsport accidents and other claims where there are issues of principle involved relating to liability.

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## Professional Liability

For many years, Graham has been recognised as a leading Silk in the area of professional indemnity work. Chambers 2017 noted "*Clients value his direct, no-nonsense approach and judgement.*" "*His legal skills are first rate, but he's also calm and unflappable.*"

His professional indemnity practice involves a range of claims, particularly more recently those in respect of negligent financial advice and in respect of insurance brokers' negligence. A broker's conduct is often an issue in insurance claims he handles, especially where non-disclosure or misrepresentation at inception or renewal is alleged or the broker has failed to advise on the terms of an insurance policy where it is alleged that there has been a breach of condition or breach of warranty by the insured. Brokers are often added as parties to claims where the insurer denies liability on grounds which have involved the broker's inadequate conduct.

Examples of his current and recent work (not including those cases where an insurance broker has become involved in an insurance or reinsurance dispute) include the following:

*Hyundai Marine & Fire Insurance Co Ltd, Daewoo Insurance Korea Corporation v Houlder Insurance Services Ltd and Houlder Insurance Brokers Far East Limited (2012-2015)* - representing insurance brokers (Houlder Insurance Brokers Far East Limited) in a claim alleging negligence and fraud in arranging reinsurance for refund guarantees issued to the buyers of commercial ships being built in Korea.

*Banks Design Architects v Cavendish Munro Professional Risks Ltd (2013-2014)* – failure by an insurance broker to notify a claim made against the insured architect. Allegations of problems relating to delays, problems with fire doors, overcharging and lack of movement joints

*Trembath and Treadwell v Bentley-Leek Financial Management Ltd, QBE Insurance (Europe) Ltd (2014)* - claims by claimants in respect of negligent financial investment advice

*FSCS v Independent Financial Advisers (2013)* – Issues as to the recovery from third parties where the individual investors had been completely or partially compensated by the FSCS

*Peter and Sheila Whitworth v Alpha to Omega (UK) Ltd and Hiscox (2012)* – claims to the FOS and against insurers regarding negligent financial investment advice in relation to an investment portfolio

*Weinstein v John Joseph Financial Services Limited (2012)* – issues relating to alleged failure to explain the risks relating to the bond issuer, a failure to advise that insurance policies would be purchased where there was no real secondary market for them to be sold into if necessary, a failure to advise that the bond which was to be purchased

was offshore and the funds invested offshore, such that there was no compensation scheme to protect the intended investment.

*Bernham Limited and others v Oval Insurance Broking Limited* (2012) – allegations of negligence against insurance brokers re information provided to insurers at inception of the contract of insurance

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## Insurance & Reinsurance

Graham has a very extensive practice covering insurance and reinsurance of most classes of risk, including particularly general commercial liability (EL/PL/products); property professional indemnity; property; motor; financial risk.

He regularly advises on, and acts in, substantial coverage disputes and in business disputes between insurers, underwriting agencies and reinsurers. He acts for insurers in substantial subrogated actions to recover their outlay. He is familiar with regulatory obligations of insurers under FSMA 2000 and with advising on the FOS jurisdiction (including challenges). He also advises on indemnity insurance issues, including notifications and coverage.

Particular specialities are acting on claims where fraud is alleged against the insured, claims where there are allegations of non-disclosure or misrepresentation of material facts at inception or renewal and claims where there are issues of breach of condition or breach of warranty. Many such claims have gone to trial and have been reported. A selection of reported cases are included below. A more extensive list of his reported cases can be found [here](#).

He is recommended in the Guides as a leading Silk in this field:

### Chambers 2017

*"someone you want on your side when something gets a bit knotty"; "He's absolutely superb and a pleasure to work with - a really, really sharp man."*

### Chambers 2015

*"A go-to counsel for policy wordings."*

*"He is very accessible and is really seen as someone who fights for the insurer and really looks after their interests."*

### Legal 500 2015

*"An impressive breadth of knowledge and extremely good client handling skills"*

Examples of his current and recent work include the following:

*Milton Insurance Ltd v Brit Insurance Ltd* [2014] Lloyd's Rep IR 540 - interpretation of conditions precedent to liability and allegations of breach of condition relating to an intruder alarm

*Bate v Aviva Insurance UK Limited* [2014] Lloyd's Rep IR 527 - acting for Aviva in establishing non-disclosure and misrepresentation of material facts relating to a previous fire and the use of a domestic property, including establishing the use of fraudulent devices and subsequently establishing Mr Bate was in contempt of court.

*Roberts v Tranmere Rovers Football Club and James Ashcroft; Tokio Marine Insurance v Aviva Insurance* (2014-15) - representing Aviva in contribution proceedings brought by Tokio Marine Insurance alleging dual insurance with Aviva policy, because of Aviva's alleged liability to indemnify James Ashcroft.

*Phoenix Engineering v Churchill Insurance* (2014-15) - representing Churchill Insurance in denying that a motor policy provided an indemnity to Phoenix Engineering where the car which caused loss and damage was set on fire by the negligence of a Phoenix employee when undertaking welding work to his own car in his employer's engineering workshop

*Equity Red Star v Axa Corporate Solutions Insurance* (2012-15) - representing Lloyd's syndicate Equity Red Star in seeking rectification of policy documents in respect of a claim by Axa for a contribution to substantial personal injury damages paid by Axa, where Axa allege dual insurance (i.e. a policy provided by Axa and a policy provided by Equity Red Star)

*John Seery v Torah & Chesed (B H) Limited* (2014-15) - representing Aviva in denying an indemnity to Torah & Chesed and considering the underlying liability of the insured in a personal injury claim

*McLauchlan & Harvey Ltd v Zürich Professional and Financial Lines* (2012-15) - representing Zürich in denying an indemnity in respect of damage to a building (c £10 million) due to non-disclosure of material facts and/or late

notification of a claim

*Castle Oak Care Partnership Ltd v National Insurance and Guarantee* (2013-15) - representing NIG in denying a claim for an indemnity in respect of fire damage (c £6 million) at a construction site, where the fire was caused by arson of an employee of the security company insured by NIG. NIG allege breach of a notification condition precedent

*Faraday Reinsurance Co Ltd v Premier Mastic Asphalt and Falmouth Beach Resort Hotel Ltd* (2012-15) – c £10 million fire damage claim at an hotel, representing Faraday in alleging as against its policyholder, breach of condition in relation to precautions to be taken to prevent a fire when working on the hotel

*Russell v Hiscox Insurance Co Ltd* (2013-15) - representing the Claimant in a claim for an indemnity ( c £6 million) on a reinstatement basis in respect of fire damage to an historic house in Northern Ireland

*Hoyle v Zürich Insurance Plc* (2013-2015) - acting for Zürich in alleging fraud against domestic policyholders, alleged to have set fire to their own home

*Dyfed Cleaning Services Limited v QBE Insurance (Europe) Ltd* - (2014) - acting for QBE in alleging breach of a condition precedent relating to the requirement to ensure the proper cooling of dried towels and linen, where the breach led to a substantial fire (c £3 million)

*Aviva Insurance Ltd v Margaret Dibb* (2013-14) - acting for Aviva in relation to a possible indemnity for liability where the tree which fell down and injured a third party after the quotation for third-party insurance was provided, but before the quotation was accepted and before the third-party insurance was contracted for

*Various Claimants v Castlebeck Care (Teesdale) Limited* (2012-14) - acting for insurers in relation to a claim for an indemnity in respect of claims brought against a care home alleging physical abuse in the treatment of residents of the care home

*Evans v Zürich Insurance Company* (2013) - representing Zürich in alleging fraud in the bringing of a claim for loss and damage of a slipway following flooding through a house situated adjacent to a beach

*The Seashell of Lisson Grove Ltd and Others v Aviva Insurance Ltd and others* [2012] 1 Lloyd's Rep IR 356 - acting for Aviva in relation to allegations of breach of condition relating to the cleaning of cooking and extraction equipment in a fish and chip shop

*Sharon's Bakery (Europe) Ltd v Axa Insurance UK plc and others* [2012] Lloyd's Rep IR 164 - acting for Axa and other insurers, in establishing non-disclosure and misrepresentation of material facts relating to the earlier false representation made to a third-party funder (which was a matter of moral hazard) and establishing that false information had been provided to the insurers on the making of the claim.

*Aviva Insurance Ltd v Brown* [2011] All ER (D) 287 - acting for Aviva in establishing the use of fraudulent devices (the false setting up and arranging of evidence relating to a claim for alternative accommodation) in the making of a long-standing claim for subsidence damage.

*Synergy Health (UK) Ltd v CGU Insurance Plc and others* [2011] Lloyd's Rep IR 500 - acting for Synergy Health (UK) Ltd in establishing an entitlement to an indemnity in respect of substantial fire in a linen cleaning plant. Insurers were alleging a failure to notify them at renewal of a failure to comply with risk improvement requirements, but it was established that even if there had been notification, underwriters would not have taken any different course, such that underwriters were unable to establish the relevant reliance required to avoid having to provide an indemnity.

*Joseph Fielding Properties (Blackpool) Ltd v Aviva Insurance Ltd* [2011] Lloyd's Rep IR 238 - representing Aviva in successfully establishing fraud in relation to a prior claim made against Aviva and non-disclosure of material facts. These included non-disclosure to Aviva of the failure to advise prior insurers of material facts when proposing for various policies of insurance and of a prior fraudulent claim made against NIG. The prior fraudulent claim made against NIG was proved at trial, even though it had never been alleged or established by NIG.

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## Product Liability

A substantial part of Graham's practice includes product liability claims. Many such claims involve complex forensic, scientific, engineering and manufacturing issues which occur in many of the insurance and reinsurance cases he handles, particularly where there are allegations of breach of condition or breach of warranty of an insurance policy.

Graham is recognised as being able to get to grips easily and readily with issues of fact, expert matters and issues of principle. Serious issues of causation typically arise. Detailed forensic analysis, which Graham enjoys, is often required. Over the years, he has become experienced and adept in a wide range of claims and losses in the industrial and agricultural sectors.

Chambers 2017 note:

"His legal skills are first-rate and he's also calm and unflappable which instills confidence." "Client-friendly and an excellent advocate."

Cases referred to in his insurance and reinsurance section should also be referred to. Other examples of his current and recent work (which did not involve insurance or reinsurance issues) include the following:

*Polestar Petty Ltd v Europex Equipment Ltd* (2012-14) - representing Europex Equipment Ltd in a claim for damage to printing machinery (c £2 million) caused by an alleged failure of a printing component supplied by Europex Equipment which fractured and broke up a printing machine

*Fuguro Seacore Ltd v International Drilling Services Limited* (2014-15) - representing product liability insurers in relation to a claim for defective construction of underwater drilling equipment which led to the loss of millions of pounds worth of equipment to the seabed

*Various Claimants v Rubicon Medical Ltd* (2013-14) - representing the defendant in respect of claims for defective breast implants

*Prezzo Restaurant Harrogate v Deep Clean Hygiene Services UK Ltd* (2013-14) - representing the defendant in respect of fire damage claim arising from provision of defective equipment and defective cleaning

*Argos, Homebase and others v Leather Trade House* [2012] All ER (D) 171 - a subrogated claim against scientific advisers for failing to advise adequately in relation to the dangers of the use of dimethyl fumarate (DMF) for preventing mould on leather furniture. The use of DMF caused contact dermatitis to purchasers and users of leather covered furniture

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## Personal Injury

Graham has undertaken a substantial amount of personal injury litigation, representing Claimants and Defendants. His practice is wide ranging and extensive, now involving primarily catastrophic injury cases. Over the years, many cases have involved issues of principle as to liability – including the duty of adults when supervising children at a party (bouncy castle party), the duty owed by a holiday provision company to adult clients undertaking risks they could assess for themselves, the duty owed by a nursery school to young children playing under supervision in a woodland area, the duty of a mother to her child to ensure the child is protected in a car by an appropriate car seat and the duty of a motorsports organisation to users of a racing circuit, when approving safety measures for the racing circuit. He has acquired a special practice dealing with cases arising from serious accidents occurring at racing circuits in the United Kingdom.

Examples of his current and recent work include the following:

*Khan v Motor Sport Vision* (2014-15) - fatal injuries and other serious injuries arising from allegedly defective warning systems at Oulton Park motor racing circuit

*Mitchell and Morley v MRCRB Events Limited and Motor Sport Vision* (2012-14) - fatal injuries and other serious injuries from the allegedly negligent starting of a motorcycle race at Brands Hatch during rainfall

*Peter Corbett v Cumbria Kart Racing Club Ltd and Track Sport Challenge Ltd* (2011-14) - representing the defendants in respect of serious injuries arising from the placing of an ambulance too close to the racing line at a kart racing circuit

*Eades v Motor Sports Association, JM Kartsport Ltd and Trent Valley Kart Club* (2012-14) - representing the defendants in relation to serious injuries sustained by Mr Eades as a result of the positioning and installation of a barrier in front of a marshal post which he was occupying

*William Colley v Endless Vacation Ltd* (2012-14) - representing the defendants in a claim by a child for personal injuries arising from allegedly negligent supervision

*Linda Clark v Clark Transport Limited* (2012-14) - representing the defendant in a fatal accidents act claim when the claimant's husband was run over by a reversing lorry

*Hughes v Williams* [2013] RTR 3 - involving considerations of the liability of a mother for contributing to the injuries sustained by her daughter when sitting in an inappropriate car seat for a child of her age and size at the time of a serious accident

*Harris v Perry & others* [2009] 1 WLR 19 - representing the defendant parents in a claim by a 11-year-old boy arising out of injuries sustained on a bouncy castle, in which it was alleged that the parents were negligent in their

supervision of the use of the bouncy castle. Establishing the appropriate standard of care of an adult supervising other children

*Evans v Kosmar Villa Holidays* [2008] 1 WLR 297, [2008] 1 All ER 530 - representing the defendant holiday company in a claim by a 17-year-old boy who sustained catastrophic injuries causing paraplegia, when diving into the shallow end of a swimming pool and establishing there was no duty owed to an adult able to appreciate the particular risk himself.

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## Mediation

Graham has been engaged in representing parties at mediations for many years and has long experience in and of the mediation process. He is a CEDR qualified mediator and brings to his practice as a mediator, his extensive experience from his broad practice which is described elsewhere in the summary of his practice. He conducts mediations across the wide range of disputes which come to mediation, believing that it important to focus on the process of dialogue between the parties if a mediation is to be successful and to be proactive in bringing the parties to a settlement. Examples of cases or issues he has mediated successfully include a dispute concerning the under settlement of a difficult and unusual personal injury claim; apportioning of costs between a party and that party's representatives; the amount of ATE premiums to be paid to insurers by solicitors who held a right on behalf of those insurers to grant ATE cover to the solicitors' clients. He considers the mediation process commences as soon as he has been appointed, at which point he can immediately start engaging in dialogue with the parties in confidence, in a flexible and approachable manner. He regards his job as not being done until the ink is dry on the settlement agreement, whether that happens at the formal mediation or sometime afterwards.

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## Property Damage

Graham has represented insurers and private clients for many years in claims relating to damaged property, particularly in respect of claims arising out of fires. These involve considerations of contractual or tortious liability and a wide range of causes of the fires and other damage.

He is recommended in the Guides as a leading Silk in this field.

*Chambers 2017 write:*

*"He sees the heart of the issue immediately and never loses focus." "He enjoys a tremendous popularity based on his thorough application to his instructions, his courteous style and his great client awareness."*

Many of his cases noted in the Insurance and Reinsurance section deal with property damage. Other examples of his current and recent work include the following:

*Mueller Europe Limited v Central Roofing (South Wales) Ltd* [2013] T.C.L.R 2 - £13 million fire damage claim arising out of the failure to isolate heaters properly, when they were in close proximity to temporary scaffolding in a copper product manufacturing plant

*Milton Keynes Borough Council v Nulty* [2012] 1 Lloyd's Rep IR Plus 29 - £10 million fire damage claim arising from the careless discarding of cigarette smoking materials or (as was alleged) the prior failure to leave substantial electricity supply cables disconnected from machinery in a safe condition

*Georgia Pacific Ltd v Corlett Electrical Engineering* (2012-15) - £12 million fire damage claim (to a warehouse storing paper products) alleged to be due to the negligent investigation of information suggesting an electrical failure which subsequently caused a fire

*AJK Wood Flooring v Clipfine Ltd* (2012-15) - representing the insurers of AJK Wood Flooring seeking a contribution from Clipfine for the failure to deal appropriately with construction waste, which led to a fire causing extensive smoke damage in a new luxury development

*Various Claimants v Lancashire County Developments Ltd* (2013-15) - representing a management company in respect of very substantial fire damage (c £25 million) on an industrial estate, with issues of causation (as to the failure of an electrical component), management and supervision

*Harris Systems Ltd v Vale Interior Contractors Ltd and Hazell Richards Ltd* (2014-15) - c £6 million fire damage claim in a warehouse, alleged to be caused by negligent installation of the incorrect light fittings

*Ansco Arena Ltd v Live Nation (Music) UK Ltd* (2011-15) - serious fire damage claim at the O2 Arena arising from a fire starting in a coach driven onto site

*Carvers (Wolverhampton) Ltd v Talbot's Biomass Energy Systems Ltd (2012-2014)* – £14 million fire damage claim in a building merchant's premises arising from the negligent installation of a flue to a wood-burning stove (insufficient and inadequate supports to the flue to resist torsional twisting)

*Iliffe v Feltham Construction, Affleck Mechanical Services Limited and others (2013-15)* – c £8 million fire damage claim during the construction of a wooden house on Green Island in Poole Harbour, where the fire is alleged to be due to the defective installation of a flue serving a wood-burning stove – including representing Affleck in adjudication proceedings, in contribution proceedings and in related contribution proceedings against sub-sub-contractors.

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