



NEW SQUARE

Clare Dixon

Education

M.A. (Oxon)



Tel: +44 20 7822 2079

Year of Call: 2002

Email: c.dixon@4newsquare.com

Email Clerk: a.call@4newsquare.com

## Profile



Clare practises in three main areas: professional liability, insurance and commercial litigation. Clare believes in taking a tough but commercial approach to litigation and relishes advocacy in all its forms.

She is recommended as a Leading Junior in the legal directories for Professional Negligence and Insurance:

*"She's extremely intelligent, and gives her advice in a very understandable way" and "She is fantastic to work with and quickly grasps the detail in large cases"* (Chambers & Partners 2017)

*"A no-nonsense terrier in court, who will tenaciously fight your corner" and "Calm and collected, hardworking, and a safe pair of hands"* (Legal 500, 2016)

*"An impressive junior with over a decade of experience in commercial litigation and professional negligence. She takes on work that involves a range of professionals including solicitors, surveyors and insurance brokers". She is "A markedly insightful, meticulous and accomplished professional negligence advocate. She is approachable, driven and pragmatic - definitely someone to have on your team". "She quickly grasps the important issues and provides advice which always considers the client's commercial considerations".* (Chambers & Partners, 2016)

*"She provides crystal clear written advice, and is down to earth, pragmatic and easy to work with".* (Legal 500 2015)

*"Advises on the full range of professional negligence matters for claimants and defendants. She regularly acts on cases involving lenders and allegations of fraud. "Her speed of turnaround and the quality of her work are impressive". "She is extremely charming and nice to work with, but also packs an intellectual punch".* (Chambers and Partners, 2015)

*"Seen by many as a 'star of the future', she acts for claimants and defendants on cases relating to a wide range of professions. She is singled out for her advocacy, judgement and all-round courtroom ability". She "Quickly grasps the commercial angles of the dispute" "She's very straightforward, very logical and very persuasive".* (Chambers and Partners 2014)

Earlier editions of the legal directories have variously described Clare as being someone who **"Stands out for her ability to hit deadlines, and always gets the job done"**, is **"a future 'star in the making'"**, **"a very tenacious advocate"** who is **"determined"** and **"impressive"**.

Clare has appeared in all levels of Court (including the Supreme Court) and in arbitration and disciplinary proceedings. She is frequently instructed in high value, complex litigation either with a leader or acting on her own. Clare's professional liability work encompasses the full range of professions including lawyers, valuers, accountants and brokers. Her insurance work involves policy interpretation, coverage disputes and subrogated recovery actions. She has a particular interest in claims involving fraud.

Clare is an editor of Jackson & Powell on Professional Liability and is on the executive committee of the Professional Negligence Bar Association.

Prior to being called to the Bar, Clare read law at St Anne's College, Oxford University, where she was President of the

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## Professional Liability

*"She's extremely intelligent, and gives her advice in a very understandable way" and "She is fantastic to work with and quickly grasps the detail in large cases"* (Chambers & Partners 2017)

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*"She provides crystal clear written advice, and is down to earth, pragmatic and easy to work with".* (Legal 500 2016)

Clare specialises in all areas of professional liability with particular emphasis on lawyers, valuers, accountants and auditors, and insurance brokers. She has been instructed in numerous professional liability cases (both led and on her own account) and has appeared for claimants and defendants both in Court and at mediations. She is an experienced advocate who gets to grips quickly with what is really at issue and takes a tough line to achieve the best outcome for her client.

Clare is on the executive committee of the Professional Negligence Bar Association.

She sets out her experience of each of the professions concerned under the relevant sub-heading.

### Accountants, Auditors & Actuaries

Clare has acted both for and against accountants and auditors on numerous occasions. Notable cases include:

- Acting for accountants in relation to advice given to a number of well known footballers/managers on film finance schemes (led by Jamie Smith QC).
- Acting for a claimant in a claim against its auditors who are alleged to have failed to identify a fraud by the claimant's finance director which took place over a number of years (led by David Turner QC).
- Acting for a defendant accountant who was alleged to have failed to identify fraud within a company for whom it had acted for a number of years.
- Acting for an accountant in a claim brought by a high net worth individual arising out of the advice which was given to him on his non-domiciled status for tax purposes.
- Acting for a firm of chartered accountants in a claim arising out of their alleged failure to deal properly with a winding up petition issued against the company in which the Claimant was a director, shareholder and creditor.
- Advising a company in a claim against their former accountants following the failure of a tax avoidance scheme which they had been advised to enter into.
- Acting for an accountant following a claim by a former client whose tax affairs had been the subject of investigation by HMRC.
- Advising several companies who had been wrongly advised by their accountants about their "associated company" status.
- Advising a deceased's estate in an action against solicitors and accountants where a tax planning scheme had failed to have the benefits which had been anticipated (led by the then Sue Carr QC).
- Advising private individuals on limitation issues arising out of a potential claim against accountants following the negligent implementation of a tax avoidance scheme (led by the then Sue Carr QC).

### Construction Professionals

Clare also has extensive experience of acting both for and against engineers and architects. Recent cases have included:

- Acting for a Claimant against an engineer who had advised her on remedial works to be undertaken following subsidence damage to her home.

- Acting for an architect in a dispute concerning the major refurbishment of a restaurant.
- Acting for an architect in a claim regarding the preparation and submission of a change of use planning application.
- Acting for a project manager in a claim concerning building works at a sea front apartment block.
- Defending a site engineer involved in the setting out of foundations for a housing development.
- Advising a Claimant who wished to sue his architect for negligent advice given in relation to the design of a property and the obtaining of planning permission.
- Acting for an architect being sued for defects in the design of a residential home.

## **Financial Services Professionals**

Clare has acted in claims both for and against IFAs; in particular, in claims involving advice given on mortgages, pension schemes and investment vehicles.

Notable instructions include:

- Acting for a company which specialised in providing advice and guidance to lending institutions on their compliance with financial regulation. The company was sued by a building society for £½ million arising out of what, the building society said, was an inadequate review of the sale of 4,000 life insurance policies.
- Acting for an IFA in a claim brought by high net worth individuals relating to investment products taken out over a period of 16 years which were alleged to be unsuitable for them and into which it was said that they were advised to enter for the sole purpose of the defendant obtaining commission.

## **Insurance Brokers & Agents**

Given her considerable insurance experience Clare is well placed to act on claims for and against brokers and, consequently, is regularly instructed in relation to such claims both on a standalone basis and where insurers are also being sued.

Notable instructions include:

- Acting for a claimant whose broker failed to put in place sufficient cover resulting in substantial uninsured losses following a fire.
- Acting for a broker who was alleged to have failed to disclose material facts to an insurer as a result of which they declined a substantial fire claim.
- Acting for a broker who failed to pass on premium to an insurer as a result of which the policy was not incepted and the claimant was not covered for a fire. The broker's case was that, by reason of non-disclosure/breach of warranty, the claim would not have been covered in any event.
- Acting for a valuer in a claim against its broker arising out of a failure to notify circumstances to its professional indemnity insurer.
- Advising a company on a claim against its insurer and broker arising out of a fire which caused over £1million damage to its property (as junior to Graham Eklund QC).
- Advising a private individual who alleged that his insurance broker had failed to obtain a medical insurance policy on the terms which had been requested.
- Acting for a broker who was sued in relation to the scope of Critical Illness Cover which he had obtained for his client.
- Acting for a broker in a claim said to be worth about £6million arising out of a major fire at a factory where insurers declined to provide a full indemnity.

Clare is the editor of the "Members and Managing Agents at Lloyd's" chapter in the 7th edition of Jackson & Powell.

## **Lawyers**

Claims against solicitors comprise the largest share of Clare's professional liability practice and she has a wide breadth of experience across this field in cases involving solicitors and barristers.

Clare is often instructed in claims where the underlying matter involves a property, commercial or chancery dispute. Examples of such cases include:

- Defending a solicitor against whom allegations are made regarding his involvement in various loan transactions (led by David Halpern QC).
- Defending a firm of solicitors against allegations of breach of duty arising out of the drafting of a sale agreement for the purchase of an office block in North London in a claim said to be worth £11million (led by Ben Hubble QC).
- Defending a firm of solicitors in a claim said to be worth several million pounds arising out of the drafting of a Development and Option Agreement for the sale of a parcel of industrial land (led by Graeme McPherson QC).
- Acting for solicitors in a claim made by about 130 claimants against solicitors arising out of the advice they were given when entering into an agreement to purchase land as an investment in Spain (led by Graeme McPherson QC).
- Defending a firm of solicitors in a claim concerned with their drafting of various construction contracts (led by Roger Stewart QC).
- Defending Counsel in a claim arising out of advice given on the claimant's prospects of succeeding at trial on the proper construction to be given to a Deed of Grant.
- Successfully defending to trial a firm of solicitors against whom allegations were made arising out of their handling of a landlord and tenant dispute.
- Acting for solicitors who were alleged to have been fraudulent in their exercise of a Power of Attorney and the interpretation of a will.
- Defending to trial solicitors in a quantum only trial which considered the correct measure of loss in a no-transaction case arising out of an error in the conveyancing of commercial property: **Scott v Kennedys Law LLP** [2011] EWHC 3808 (Ch).

Clare has particular experience of "lost litigation" claims particularly in the personal injury and employment fields (having herself acted in such cases in her early years as a barrister). Instructions in this area include:

- Defending to trial a firm of solicitors in a claim arising out of personal injury litigation: **Amin v IKP** [2011] EWHC 2958
- Defending at trial a firm of solicitors in a claim arising out of an employment dispute in a claim which considered the applicable law in claims which included an element of personal injury: **Begum v Neejam LLP** (Unreported 9.12.15).
- Defending to trial a claim against a firm of solicitors arising out of the alleged negligent conduct of employment proceedings.
- Defending to trial a claim brought by a disappointed beneficiary who alleged that she had been negligently left out of a will.

Clare is also experienced in actions where the underlying subject has been instructed on a number of cases involving claims by lenders. A number of these claims involved allegations of breach of undertaking, breach of fiduciary duty, breach of trust and/or fraud. Notable examples of such cases include:

- Acting for a solicitor in a breach of trust claim which involves issues of causation following the decision in *Redler* and whether they can rely upon the defence afforded by section 61 of the Trustee Act 1925.
- Advising a solicitor on the extent of the total loss which falls within the scope of its duty where multiple loans were made by a lender for the purchase and development of a property.
- Acting for a solicitor (led by Ben Hubble QC) whose partner had acted in about 1,000 property transactions in relation to which fraud was alleged.

Clare is frequently instructed in cases arising from matrimonial matters including cases arising from the drafting of consent orders, the alleged under/over settlement of financial proceedings and concerning children. Examples of such cases include:

- Defending a solicitor sued in relation to advice given in its conduct of matrimonial proceedings (*Hogg v Crutes* unreported 1.11.16).
- Acting for solicitors in a claim brought against it for the under settlement of financial proceedings arising out of the alleged failure to properly value the former husband's company.
- Acting in a number of claims brought against solicitors arising out of the alleged failure to properly value a spouse's pension fund and, consequently, under settling ancillary relief proceedings.
- Acting for a solicitor in a claim brought by a former client for the alleged over settlement of ancillary relief proceedings in which he was the paying party with significant pension assets.
- Acting for an individual in a claim against solicitors arising out of her divorce (as junior to Roger Stewart QC).
- Acting for solicitors who were alleged to have given inadequate advice on the enforceability of a pre-nuptial agreement.
- Acting for an individual in a claim against solicitors by reason of whose negligence he had not been granted access to his children for a number of years.

Clare also has considerable experience of wasted costs having advised and acted for both solicitors and Counsel in relation to such applications. She also has experience of acting against litigants in person and obtaining civil restraint orders. Notable examples include:

- Acting for Leading Counsel (led by Roger Stewart QC) in successfully defending an application for wasted costs which had been made against him: *Kagalovsky v Balmore Invest Ltd* [2015] PNLR 26
- Successfully acting for a law centre at a second stage wasted costs application where it was alleged, amongst other things, that the claim on which they were acting was fundamentally flawed and the amount claimed grossly inflated.
- Acting for a barrister who had been subjected to repeated claims by the same individual in a successful application for an extended civil restraint order and an injunction pursuant to the Protection from Harassment Act 1997: *Apsion v (1) Dilnot, (2) Butler and (3) Hugh James LLP* LTL 11/4/2013.

## Surveyors & Valuers

Clare has considerable experience of claims involving valuers and surveyors involving, in particular, large scale lending for the purpose of purchasing and then developing commercial sites.

Notable instructions include:

- Acting for valuers in a claim said to be worth £16million arising out of the valuation of a mixed use development in Basildon (led by Patrick Lawrence QC).
- Acting for a building surveyor who was retained in relation to the cost of developing a mixed use site in Sheffield.
- Acting for valuers in the alleged negligent over valuation of a care home. In addition to the usual factual and expert issues, the case involves an interesting question of law arising out of whether a claimant can recover loss where there is only a negligent vacant possession valuation.
- Acting for a valuer in relation to its valuation of a redevelopment site in Plymouth.
- Acting for surveyors in a claim arising out of their valuation of commercial property in Bournemouth. The claim raised issues regarding SAAMCo cap and whether loss has been suffered in circumstances where the underlying loan continued to be paid. An issue on the expert evidence in this case (which then settled) was reported at *Bank of Ireland v Donaldsons* [2014] EWHC 1957.
- Acting for a valuer in a case which considered the scope of a surveyor's duty of care following the decision in *Scullion v Bank of Scotland* [2011] EWCA Civ 693: *Squirrel v Bradley's Surveyors* LTL 10/1/2012.
- Acting for a firm of surveyors sued for failing to note historic movement in a domestic property.

- Clare has acted on a number of occasions for surveyors who have been instructed to act (sometimes for a party and sometimes as the independent expert) in a boundary dispute, and have then been sued by one of the parties.

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## International Arbitration

Clare has experience of domestic and international arbitrations including LCIA, insurance, construction and commercial arbitrations.

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## Commercial Dispute Resolution

Clare's practice includes a variety of commercial work. She has acted in a variety of contractual disputes as well as matters involving sale of goods litigation and mortgage related disputes. She also has experience of obtaining urgent injunctive relief having advised upon and obtained freezing injunctions and disclosure orders.

Notable instructions include:

- Acting for a software company in a dispute over the construction and application of a sale purchase agreement involving the sale of a website and associated assets.
- Acting for a loss adjustor in a case involving interlocking commercial agreements arising out of the handling of claims under the RTA portal.
- Acting for a financial services compliance company in a contractual dispute with a bank to whom it had provided services.
- Acting for a glazing specialist in a contractual claim arising out of the supply of sealant for a construction project.
- A substantial dispute between a local authority and its services outsourcing provider. The case involved the interpretation of multiple interrelated contracts and contractual documents, and their application to a variety of local authority procurement needs (eg highways and residential care homes). Clare was Instructed by Pinsent Masons LLP and led by David Turner QC.
- A claim in fraud by a professional indemnity insurer and a leading firm of solicitors against their former employee: **Travelers Insurance Co Ltd & Denton Wilde Sapte v Advani** [2012] EWHC 623. The case was concerned with whether the former employee had acted fraudulently and/or outside the scope of her employment so as to entitle the claimants to recover costs which they had expended in defending both the former employee and her then employer in a previous action. Clare was led by Justin Fenwick QC for the trial of the action but then acted alone on the subsequent freezing injunction applications.
- Clare was instructed by Holman, Fenwick & Willan in a 12 week trial in the Commercial Court: **Abu Dhabi Investment Company v Clarkson** [2007] EWHC 1267 (Comm). The Claimants had invested in a joint venture container shipping line which was to be operated from Abu Dhabi: Abu Dhabi Container Lines ("ADCL"). ADCL purchased 10 container vessels to run on its line at a cost of about USD\$400million. ADCL failed within months of its inception. Proceedings were brought against the ship brokers who had advised the Claimants, the joint venture partner who it was found had fraudulently misrepresented the earning capacity and viability of the vessels, and the bank who had provided funding for the venture.
- Acting for a flooring supplier which succeeded at trial in a claim relating to the payment for, and supply of, goods.

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## Insurance & Reinsurance

*"A no-nonsense terrier in court, who will tenaciously fight your corner"* (Legal 500, 2016)

Clare's practice includes a substantial insurance element both as a junior and on her own account.

### Professional Indemnity Insurance

With extensive experience in both professional liability and insurance matters, Clare is frequently instructed to advise in respect of non-disclosure, aggregation, successor practice and the interpretation of professional indemnity policies. Her instructions have ranged across a broad range of professions including solicitors, mortgage intermediaries, surveyors and debt recovery agents. Clare has particular interest in, and experience of, dishonesty issues and has acted for both insurers and insureds in relation to such matters.

Clare (led by Mark Cannon QC) appeared for the successful insurers in the Supreme Court case of *Impact Funding Solutions Limited v AIG Europe Limited* [2016] UKSC 57; [2016] 3 WLR 1422. *Impact* considered the ambit of the "trade debts" exclusion in solicitors' professional indemnity policies and whether it excluded a solicitor's liability to a disbursement funding provider. The Supreme Court also gave important guidance on the construction of clauses which, while worded in terms of exclusion, do no more than to define the extent of the liability or duty to which one party of a contract is to be subject.

Cases in this area include:

- Advising and acting for an insured valuer in an action against its professional indemnity insurers arising out of the scope of notifications made in the course of a policy year.
- Advising and acting for an insurer in an arbitration concerned with whether a notification was of a specific number of transactions or was a "can of worms" type notification.
- Acting for a solicitor against whom allegations of fraud, and claims for reimbursement, have been made by insurers who provided cover in three successive years.
- Acting for an insurer (led by Justin Fenwick QC) in an arbitration to determine who had first been notified of a number of claims with a value of about £2million. The case turned on whether, in the circumstances of this case, file requests by a lender comprised a notification of circumstances.
- Acting for an insurer (led by Justin Fenwick QC) in an arbitration to determine which insurer was on risk for a number of claims which were said to have been notified as part of a "can of worms" notification to insurers.
- Acting for a professional indemnity insurer (led by Justin Fenwick QC) in a claim against their former insured: *Travelers Insurance Co Ltd & Denton Wilde Sapte v Advani* [2012] EWHC 623. The case was concerned with whether the former employee had acted fraudulently so as to entitle the insurer to recover costs which they had expended in defending both the former employee and her then employer in a previous action.
- Acting for a valuer's professional indemnity insurer initially (alone) to advise on the scope of the cover and the year which was potentially on risk and then (led by the then Sue Carr QC) to advise on whether insurers were entitled to decline cover to the insureds for dishonestly failing to disclose the existence of a potential claim prior to the renewal of the policy.

#### **Employers' and Public Liability Insurance**

In 2012, the Supreme Court handed down judgment in the *Employers' Liability Policy Trigger Litigation*. This was the successful culmination of several years work during which Clare (led by Jeremy Stuart-Smith QC and Leigh-Ann Mulcahy QC) had represented Zurich Insurance Company at a 9 week trial in front of Burton J, a 3 week hearing before the Court of Appeal and a 2 week hearing in the Supreme Court. The case was concerned with the proper interpretation of employers' liability policies which were written on an "injury sustained" or "disease contracted" basis and whether they would respond to mesothelioma claims at the time of inhalation or when the tumour developed. The Supreme Court found, by a majority, that such policies should respond at the date of inhalation.

Since *Trigger* Clare has been instructed to act on other matters concerning notifications to EL and PL insurers.

#### **Other Experience**

Clare's insurance practice is not confined to professional indemnity and EL/PL cases. She is frequently instructed to act for insurers/insured in case arising out of other types of policies and is familiar with the particular issues around other specialist areas of insurance such as D&O, Motor Trade, Personal Accident and Fire policies.

Cases in this area include:

- Acting for a claimant construction company in a claim against insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 following insurers' decision to withdraw cover from a party against whom the claimant had obtained an arbitration award. Clare was led by Justin Fenwick QC.
- Acting for the insured in his claim for an indemnity under his former employer's personal accident insurance policy. The claim turned on the meaning of "accident" within the policy.
- Instructed by both insurers and the policyholder to make a binding determination as to whether prosecution costs incurred by a managing agent in the course of a Health & Safety prosecution were covered under an insurance policy.
- Acting for insurers to defend a claim for an indemnity arising out of property damage on the basis that the claim

made was fraudulent and/or was supported by fraudulent devices.

Clare is the current editor of the "Members and Managing Agents at Lloyd's" chapter in Jackson & Powell. She regularly gives talks and seminars on insurance law.

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## Disciplinary

Clare has advised on, and appeared in, disciplinary proceedings in a number of forums, but particularly in the Solicitors' Disciplinary Tribunal.

- Clare appeared for the solicitor in Case Ref. 11399 (Mashru). The focus of the case was on whether the solicitor had used the client account as a banking facility, had paid sufficient regard to compliance with the Money Laundering Regulations and had adequately supervised a solicitor who he knew to be subject to an ongoing SRA investigation. The case was dismissed.
- Clare was also instructed to act for the solicitor in Case Ref. 1137 (Devine), which involved allegations of using a client account as a banking facility, improper retention of client funds and acting where there was, or was a significant risk of, a conflict of interest. Prior to the hearing, the solicitor and the SRA agreed a statement of facts and a suggested outcome. The SDT took the opportunity at the hearing to provide guidance on the proper procedure to be adopted in those circumstances.
- Clare was instructed to act for the solicitor in Case Ref. 10593 (Richards) which involved allegations of breach of undertaking and, so far as the penalty was concerned, dealing with issues of mitigation and impecuniosity.

Clare also has experience of financial disciplinary matters and is currently instructed in relation to the referral of an FCA Decision Notice to the Upper Tribunal.

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## Product Liability

Clare has acted for both Claimants and Defendants in product liability cases. Her experience includes:

- Clare is instructed in a number of cases (led by David Turner QC) which arise from the supply of allegedly defective concrete for use in a variety of major construction projects.
- Acting for the Defendant in a flooding claim arising out of a faulty connection within a fridge.
- Acting for a Claimant in a flooding claim arising out of the failure of a water softener due to the joint between two parts within the softener having been wrongly designed/manufactured.
- Acting for a Defendant in a claim arising out of the installation of faulty oil tanks and a subsequent, substantial, oil leak.
- Acting for a Claimant vehicle repair centre in a fire claim arising out of the failure of a spray booth used to respray vehicles.
- Acting for a well known electrical retailer in a fire claim which fire is said to have started by reason of a faulty dishwasher which they supplied.

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## Construction & Engineering

Clare has experience of construction disputes on both a large and small scale and both within and outside the professional liability context. Clare regularly appears in the Technology and Construction Court and has experience of arbitrations and adjudications. She enjoys getting to grips with the technical information and expert evidence often involved in such disputes.

Examples of her cases include:

- An ongoing dispute involving a number of cases which arise from the supply of concrete which was used in a variety of major construction projects. Clare is led by David Turner QC.
- Clare was instructed for a demolition sub-contractor in a claim brought by the main contractor arising out of works done during an office block refurbishment in Birmingham.
- Acting for a glazing sub-contractor in a claim brought by the main contractor arising out of the installation of windows in an atrium.

- Clare was instructed on behalf of the architect in a dispute concerning the major refurbishment of a restaurant.
- Clare was instructed for a project manager in a claim concerning building works at a sea front apartment block.
- Clare was instructed by Kennedys LLP in a multi-party construction dispute arising out of the insulation of chilled water pipework at Linklaters LLP's City office. Two summary judgment applications were made. The first, ***Linklaters Business Services v Sir Robert McAlpine*** [2010] EWHC 1145, 130 Con LR 111 considered the duty of care owed by a sub-sub-contractor whose carelessness in installing insulation in a building had caused damage to other areas of that building. The other, ***Southern Insulation v How Engineering*** [2010] EWHC 1878 considered whether a sub-sub-contractor could owe a sub-contractor a duty of care such that the sub-contractor could recover sums which it was held liable to pay the main contractor.

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## Property Damage

Clare has substantial experience in property damage claims involving such things as floods, fires, subsidence and construction works. Her experience includes:

- Clare is instructed in a number of cases (led by David Turner QC) which arise from the supply of allegedly defective concrete for use in a variety of major construction projects.
- Acting on a variety of claims, for both Claimants and Defendants, and in both a domestic and commercial context, arising out of floods which are said to be due to defective plumbing works.
- Acting for a garage owner whose garage was flooded when a culvert owned by a local authority became blocked.
- Acting for a claimant in a claim arising out of the destruction of part of the highway following a road traffic accident.
- Acting for a number of claimants in the Buncefield litigation including a substantial claim for insured and uninsured losses by a haulage company and other claims which involved complex business interruption issues.

In addition Clare has substantial expertise in nuisance claims, particularly involving multiple parties. Recent examples of cases of this nature are:

- Defending a claim (led by Jamie Smith QC) made by about 300 claimants arising out of dust, noise and odour said to be emanating from an industrial unit in Kent.
  - Defending a claim made by about 100 claimants in relation to the smell alleged to be emanating from a vegetable processing unit.
-