NEW SQUARE

Clare Dixon

Education

M.A. (Oxon)

Tel: +44 20 7822 2079
Email: c.dixon@4newsquare.com
Email Clerk: a.call@4newsquare.com

Year of Call: 2002

Profile

Clare's practice encompasses three main areas: professional liability, insurance and commercial litigation.

She is recommended by Chambers & Partners and Legal 500. Quotes from the directories include:

"*Seen by many as a star of the future"; "Singled out for her advocacy, judgement and all-round courtroom ability"; "Stands out for her ability to hit deadlines, and always gets the job done"; "Extremely charming and nice to work with, but also packs an intellectual punch"; "Her speed of turnaround and the quality of her work are impressive";* "*Quickly grasps the commercial angles of the dispute"; "Very straightforward, very logical and very persuasive*"; "*A very tenacious advocate"; "Well prepared"; "Determined"; "Impressive"* and noted for her "*Commercial understanding and thoroughness*".

Clare was instructed by Zurich Insurance Company in the *Employers' Liability Policy Trigger Litigation*. This major policy interpretation 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 risks at the time of inhalation or when the tumour developed. The case culminated in a two week hearing before the Supreme Court and a successful outcome for Zurich.

She has extensive experience of professional liability matters and is regularly instructed to act for or against solicitors, surveyors, insurance brokers, barristers and accountants. In recent years she has been kept particularly busy with litigation brought by lenders, several of which claims have involved issues of fraud.

At the cross over of her insurance and professional liability work come cases involving professional indemnity policies. Clare has advised both insurers and insureds on a variety of issues including policy interpretation, non-disclosure and fraud. In 2012 she was instructed by insurers in their successful claim in fraud against their former insured: *Travelers Insurance Co Ltd & Denton Wilde Sapte v Advani* [2012] EWHC 623

Clare is an editor of *Jackson & Powell* on *Professional Liability* and 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 Oxford Union.

Commercial Dispute Resolution

Clare's practice includes a variety of commercial work. She has acted in matters involving property damage, 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.

In 2013, Clare was instructed by Pinsent Masons LLP (led by David Turner QC) on a substantial dispute between a local authority and its services outsourcing provider.

Clare has considerable experience of claims arising out of or involving fraud. In 2012 she was led by Justin Fenwick QC (instructed by Clyde & Co LLP) in a claim which was successfully brought 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.

In 2006, Clare was instructed by Holman, Fenwick and 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.

Construction & Engineering

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.

In the professional liability context Clare has acted on numerous occasions for and against engineers and architects.

Disciplinary

Clare has advised on, and appeared in, disciplinary proceedings both at the Institute of Civil Engineers and in the Solicitors' Disciplinary Tribunal.

Insurance & Reinsurance

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

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.

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. She has considerable experience of professional indemnity arbitrations and indemnity conferences.

Clare has particular interest in, and experience of, dishonesty issues and has acted for both insurers and insureds in relation to such matters. In 2012 she was led by Justin Fenwick QC in a claim in which a professional indemnity insurer successfully alleged that an employee of their insured had acted fraudulently: *Travelers Insurance Co Ltd & Denton Wilde Sapte v Advani* [2012] EWHC 623.

Clare is also familiar with the particular issues around other specialist areas of insurance such as D&O, Motor Trade, Personal Accident and Fire policies.

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

Professional Liability

Clare is recommended by both Chambers & Partners and The Legal 500 for professional negligence.

Clare sets out in detail 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 has particular experience of cases involving tax avoidance schemes. Notable cases include:

- 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.
- Acting for accountants in relation to advice given to clients on film finance schemes.
- Acting for a claimant (as junior to David Turner QC) in a claim against their auditor arising out of the auditor's failure to identify a fraud.
- 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 (as junior to Sue Carr QC).
- Advising private individuals on a claim against accountants following limitation issues arising out of a potential claim against accountants following the negligent implementation of a tax avoidance scheme (as junior to Sue Carr QC).
- Advising a company on their prospects of success in an action 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.

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.
- 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.

Insurance Brokers & Agents

Clare has been instructed on various matters concerning insurance brokers, which dovetails with her experience involving general insurance matters. Notable instructions include:

- 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.

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.

In 2012/2013 Clare was instructed by a company which specialised in providing advice and guidance to lending institutions on their compliance with the regulatory requirements of the Financial Services Authority (as was). 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.

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. She is frequently instructed in cases involving "lost litigation" of a variety of types, property related disputes (including undue influence) and matrimonial matters.

Clare also has considerable experience of wasted costs having advised and acted for both solicitors and Counsel in relation to such applications.

Examples of her notable and recent cases include:

- 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.
- 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 (as junior to Ben Hubble QC).
- Acting for Leading Counsel (as junior to Roger Stewart QC) in successfully defending an application for wasted costs which had been made against him.
- In *Apsion v (1) Dilnot, (2) Butler and (3) Hugh James LLP* LTL 11/4/2013, 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.
- 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 (as junior to Graeme McPherson QC).
- Defending a firm of solicitors in a claim concerned with their drafting of various construction contracts (as junior to Roger Stewart QC).
- Defending to trial a firm of solicitors in a claim arising out of personal injury litigation: *Amin v IKP* [2011] EWHC 2958
- Defending solicitors in a quantum only trial which considered the correct measure of loss in a no-transaction case: *Scott v Kennedys Law LLP* [2011] EWHC 3808 (Ch).
- Defending to trial a firm of solicitors in a claim brought by a "disappointed beneficiary".
- Acting for an individual in a claim against solicitors arising out of her divorce (as junior to Roger Stewart QC).
- 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.

Surveyors & Valuers

Clare has considerable experience of claims involving valuers and surveyors both in the commercial and domestic context. This area of her practice has become particularly dominant in recent years with the rise of lender litigation. Notable instructions include:

- *Acting for valuers in a claim said to be worth £16milion arising out of the valuation of a mixed use development (led by Patrick Lawrence QC).*
- *Squirrel v Bradley's Surveyors* LTL 10/1/2012 which considered the scope of a surveyor's duty of care following the decision in *Scullion v Bank of Scotland* [2011] EWCA Civ 693.
- Defending a firm of surveyors sued for failing to note historic movement in a domestic property.
- Defending a firm of surveyors sued for over-valuing commercial premises in London.