



## Leigh-Ann Mulcahy QC

### Education

M.A. (Cantab.) LL.M. (Osgoode, Canada) Dip. E.C.Law (Kings).  
Scholarships/prizes: Foundation Scholarship (Jesus College); Squire  
Scholarship (Cambridge University); C.J. Hamson Prize for Contract Law (Cambridge University);  
Major Scholarship (Inner Temple); Commonwealth Scholarship.



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**Year of Call:** 1993

**Year of Silk:** 2009

## Profile



Leigh-Ann Mulcahy QC is listed by the legal directories as a leading silk in four fields (Professional Negligence, Product Liability, Insurance and Administrative & Public Law).

She has been described in the legal directories as follows: *"an incredibly good appellate advocate"*; *"at the top of her field"*; *"truly brilliant"*; *"she is an iron fist in a velvet glove"*; *"first-rate"*; *"outstanding"*; *"formidably intelligent"*; *"extremely bright and highly organised"*; *"prodigiously hard-working and possesses both a first-class brain and very sound judgment"*; *"excellent, thorough...with encyclopaedic knowledge of the case-law"*; *"tenacious with the opposition"*; *"stunning performances"* in court. She is also considered to be *"very user-friendly"* and to display an *"ease of manner with both peers and clients"*.

Leigh-Ann has wide advocacy experience at all levels, including the Supreme Court and House of Lords. She succeeded in two cases before the Supreme Court (*The Atomic Veterans Litigation* and *The Employers' Liability Policy Trigger Litigation*) and one before the House of Lords (*Medcalf v Mardell*). She is currently appearing in another appeal to the Supreme Court in *International Energy Group Ltd v Zurich* which relates to the insurance of asbestos liabilities. She also acts as an advocate and arbitrator in commercial and insurance arbitrations and is currently acting in a very high value international arbitration. Leigh-Ann has extensive experience of handling group/multi-party litigation and is especially noted for cases involving complex technical or scientific evidence.

Leigh-Ann was appointed First Counsel to the Welsh Government in November 2013, a role which she combines with her other practice. Prior to her appointment to silk, Leigh-Ann held the appointment of Treasury Counsel (A Panel) and since taking silk she has continued to act in cases for the UK Government upon the nomination of the Attorney-General. Over the course of some 18 years, she has acted for a wide range of Government departments and other public bodies on issues including public law, EC law and human rights.

Leigh-Ann accepts instructions as a mediator (CEDR accredited) and has been appointed as a Senior Decision-Maker for the Guernsey Financial Services Commission.

She specialises in the following areas of practice:

- Professional liability, particularly claims involving lawyers and accountants, insurance brokers and financial services professionals;
- Product liability, including commercial products and claims in relation to pharmaceuticals, food safety, medical devices and blood products;
- Insurance and reinsurance, particularly liability insurance;
- Public law and human rights;
- Commercial litigation, including financial services, commercial fraud and utilities law;
- Mediation;
- Arbitration.

Major cases include:

- *International Energy Group Ltd v Zurich* [2013] PIQR P10, an employers' liability insurance case concerning asbestos/mesothelioma risks and in particular whether an insurer has any right of recoupment from a solvent employer in respect of uninsured periods, which is currently on appeal to the Supreme Court;
- *The Employers' Liability Insurance Trigger Litigation (Durham v BAI (Run Off) Ltd* [2012] 1 WLR 867), a multi-party action and major liability insurance case concerning asbestos/mesothelioma risks, which was appealed to the Supreme Court. She represented Zurich Insurance Company.
- *The Atomic Veterans Litigation (AB & ors v Ministry of Defence* [2013] 1 AC 78), a large multi-party action arising out of the British nuclear tests in Australia and the South Pacific in the 1950s which was again appealed to the Supreme Court. She represented the Ministry of Defence.
- *The Miners' Knee Litigation (Davies v Secretary of State for Energy and Climate Change* [2012] EWCA Civ 1380), a large group action arising out of the development of osteoarthritis in the knee from coal mining. She represented the Department for Energy and Climate Change in an appeal by the claimants to the Court of Appeal.
- *The Porton Down Litigation*, a multi-party action arising out of a programme of non-therapeutic experimentation at Porton Down with chemical warfare agents and antidotes. She represented the Ministry of Defence.
- *Medcalf v Mardell* [2003] 1 AC 120, a professional liability claim involving the first and only wasted costs case to be heard by the House of Lords. Leigh-Ann appeared on behalf of the successful barrister respondents. As junior counsel, she presented part of the appeal orally before the House of Lords.
- *The BSE Litigation*, a multi-party action which arose out of the development of BSE/vCJD and resulted in an *ex gratia* compensation scheme being set up by the Government. Leigh-Ann acted for the Department of Health and Department of Environment, Food and Rural Affairs. During 2010, she defended a major judicial review of the vCJD Compensation Scheme on behalf of the Department of Health ((2010) Med LR 204 & [2010] EWHC 1225).
- *Aspirin/Reyes Syndrome* [2002] Lloyd's Rep Med 333, a product liability claim in which Leigh-Ann acted on behalf of the Committee on the Safety of Medicines.
- *The Creutzfeldt-Jakob Disease/Human Growth Hormone Litigation*, a multi-party product liability action by claimants who had developed CJD as a result of taking human growth hormone or had received the medicine but were "worried well" ((2000) 54 BMLR 1, 79, 85, 95, 100, 103, 104, 111; [2000] Lloyd's Rep Med 161). Leigh-Ann acted for the Department of Health and Medical Research Council.

She is Consultant Editor and contributor to *The Law and Regulation of Medicines* (OUP), Editor of *Jackson & Powell on Professional Liability* (7th ed) (Thomson Reuters), contributor to R. Goldberg's *Perspectives on Causation* (Hart) and General Editor of *Human Rights and Civil Practice* (OUP).

Leigh-Ann is a non-executive director of Bar Mutual Indemnity Fund Ltd. She is called to the Bar of the Republic of Ireland. She is also an international advanced advocacy trainer.

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## Professional Liability

"Noted for her ease of manner with both peers and clients", Leigh-Ann "is a well-established name in the professional negligence world and continues to grow her already vast practice". She is described in the directories in relation to this field as "outstanding", "extremely bright and highly organised" and is "highly recommended for solicitors' negligence cases" and said to be a "thorough and an extremely safe pair of hands."

### Accountants, Auditors & Actuaries

- Defending an accountants/tax advisers' negligence claim on behalf of MRI Moores Rowland LLP
- Represented the UK and Cayman branches of a firm of accountants and tax advisers in a substantial case involving alleged breaches of the company and insolvency legislation and professional negligence: *Bezant v Rausing & 16 ors* [2007] EWHC 1118

### Construction Professionals

Experience of acting for/against construction professionals including

- Acting for an architect on a £20M claim arising out of alleged negligence in designing a modification to a factory which was subsequently destroyed by fire
- Advised on claim against engineer arising out of a defective floor slab in a major commercial development
- Acting for firm of engineers in relation to claims arising out of a defective industrial crane
- Acting on a claim for repudiatory breach of contract: *Bedfordshire County Council v Fitzpatrick Contractors* [2001] BLR 226

### Insurance Brokers & Agents

- Acting for a multinational financial services company in relation to claims against producing and placing brokers arising out of failure to make a notification and/or alleged non-disclosure to insurer of material information leading

- to avoidance of cover
- Acting for insurance brokers in relation to a claim of alleged negligence arising out of the scope of their customer's cover

## Lawyers

Particular expertise in relation to wasted costs applications, issues of professional conduct including conflicts of interest, claims for lost litigation and disadvantageous property transactions and claims arising in the criminal or regulatory context.

- Defended a high value wasted costs claim arising out of failed employment tribunal proceedings.
- Defended a High Court claim on behalf of a firm of solicitors arising out of a property transaction involving allegations of dishonest assistance in a breach of trust.
- Advised in relation to a solicitors negligence claim arising out of lost product liability litigation.
- Acted for insurers of a licensed conveyancer in relation to a number of claims arising out of alleged lending transactions.
- Appeared on a 3 day s.33 Limitation Act 1980 application in Central London County Court (value £1M+) on behalf of claimants whose solicitors who had wrongly obtained extensions of time for service of first claim forms leading to the claims being struck out and had to bring fresh claims on behalf of their clients.
- Defending a QC in proceedings in the Chancery Division by former clients against their solicitors and counsel arising out of lost commercial litigation: *Griswold v Mace Jones & anr* (2013).
- Advised a commercial client on the merits and quantum of a proposed claim against two former firms of solicitors arising out of a failed business venture involving a disqualified director.
- Acted for and obtained summary judgment on behalf of a barrister in a claim arising out of an alleged failure to advise a vulnerable claimant on the protection of her damages following settlement of a personal injury claim: *Phelps v LHP Law & or* (QBD, 2010).
- Appeared on behalf of a barrister at the trial of a negligence claim by a firm of solicitors against a barrister alleging a duty of care to protect their fees: *Protopapas Solicitors v Spon-Smith* (Ch.Div, 2010).
- Defended a solicitors' negligence claim arising out of private client tax advice and drafting a share sale agreement: *Bertram v Eversheds & Boodle Hatfield*.
- Defended a wasted costs application against solicitors following a long trial in the Chancery Division arising out of the preparation of witness statements, giving of evidence etc: *Cabvision v Feetum, Marsden & Smith and Dean & Dean Solicitors* (2010).
- Led the defence of an appeal on behalf of all respondents to a negligence claim arising out of lost litigation in *Leonard v Byrt* [2008] EWCA Civ 20.
- Represented solicitors in Commercial Court claim arising out of compromise of litigation in *Reass SARL v Markel International Insurance Company* (2007).
- Acted on an appeal relating to costs issues arising from the Vibration White Finger litigation against solicitors: *Russell Young & Co v Kevin Brown & ors* [2007] 2 All ER 452
- Represented the respondent barristers to the first wasted costs case to be heard by the House of Lords in *Medcalf v Mardell* [2003] AC 120 and argued the human rights submissions.

## Surveyors & Valuers

- Has dealt with claims against surveyors and valuers in relation to both residential and commercial valuation claims. Expertise in marine surveyors' liabilities.

## Experts

- Acted for the expert in the first claim for wasted costs against experts: *Phillips and ors v Symes & ors (No 2)* [2005] 1 WLR 2043, [2004] EWHC 2330 (Ch)

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## International Arbitration

- Leigh-Ann has acted and accepts instructions to act both as an arbitrator and as an expert determiner in insurance and commercial disputes which the parties have agreed or wish to resolve in a confidential forum.
- She has recently appeared as counsel in a very substantial international arbitration arising out of a high-value and complex IT contract.
- Leigh-Ann contributes articles in the field of arbitration law to Lexis PSL *Arbitration*.

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## Commercial Dispute Resolution

Leigh-Ann has experience of acting or advising in a wide range of commercial and contract disputes including sale of goods, agency, share purchase agreements, credit factoring, energy law and insolvency. She has also advised and acted in relation to financial services issues.

- Acting on behalf of Welsh Ministers in a substantial competition law case being tried in the Chancery Division against a pharmaceutical company to recover losses to the Welsh NHS as a result of anti-competitive conduct.
- Acting for a liquidator of a liquidated company on a claim in the Companies Court to enforce a cross-undertaking in damages given by HM Revenue & Customs when seeking an order to appoint a provisional liquidator.
- Acting in very substantial international commercial arbitration involving a high value and complex IT dispute.
- Acted in a challenge to enforcement action by the Financial Conduct Authority.
- Advised in relation to a proposed retail banking claim arising out of alleged negligence in relation to cheque fraud.
- Acted (with John Powell QC) on a claim for insurance and investment fraud made by a financial services regulator against the former directors of CLICO, a Trinidadian company with business across the Caribbean.
- Acted on behalf of various insurers in the credit hire context on issues of re-trial and future case management arising out of the *Dickinson v Tesco* test cases decided by the Court of Appeal.
- Acted on a £4M+ claim by a company against its former CEO and director for breaches of fiduciary and contractual duties.
- Acted for the claimant in relation to two serious commercial fraud cases arising out of property transactions.
- Advised and acted for multi-national shipping company in securing recovery of its shipping containers and personally negotiated international settlement agreement in relation to a dispute between German and Netherlands companies.
- Acting on a high value international trade dispute between a UK based import/export company and a major US retailer concerning breach of contract and economic torts.
- Acted in *AE Beckett & Sons (Lyndons) Ltd v Midlands Electricity* [2001] 1 WLR 281, CA (exemption clauses for economic loss; statutory construction of Electricity Act 1988).
- Acted in various claims arising from interruption of electricity supply including *MV Sports Ltd v Midland Electricity* (2002) and a claim against National Grid.

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## Insurance & Reinsurance

Listed as a Leading Silk for Insurance in Chambers & Partners 2014, Leigh-Ann is described by the directories in relation to this field as “*excellent, thorough and a barrister with encyclopaedic knowledge of case-law*” and “*At the top of her field, she provides excellent advice.*” Leigh-Ann’s combination of expertise in relation to insurance, financial services, professionals and public law has led to her advising and acting in a number of cases which straddle these fields (in both the litigation and arbitration contexts). She has considerable expertise in relation to the insurance of asbestos liabilities and issues that arise in relation to the insurance of financial services professionals (and in particular in relation to issues arising over proactive consumer redress).

- *International Energy Group Ltd v Zurich* [2013] PIQR P10, an employers’ liability insurance case concerning asbestos/mesothelioma risks. Appeared on behalf of Zurich in an appeal to the Court of Appeal. Currently on appeal to Supreme Court. Raises novel issues arising out of the *Fairchild* line of developments in the law of tort and its impact on insurers and considers whether an insurer has any right of recoupment from a solvent employer in respect of uninsured periods of asbestos exposure;
- Appeared on behalf of Zurich Insurance Company in the Employers Liability Insurance Trigger Litigation *Durham v BAI & ors* at trial [2009] 2 All ER 26, on appeal to the Court of Appeal [2010] EWCA Civ 1096 and on appeal to the Supreme Court [2012] UKSC 14.
- Regularly advises both insurers and insureds on various issues arising in relation to the insurance of asbestos liabilities in the employers’ liability and public liability contexts, including aggregation, policy construction, contribution issues between insurers, insurer-insured and between group companies, the operation of the Financial Services Compensation Scheme etc.
- Regularly advises insurers on various coverage issues, including issues over the construction of the Minimum Terms for solicitors’ and surveyors’ professional indemnity insurance, aggregation, notification and avoidance for fraud/dishonesty.
- Acted on a claim by a multinational financial services company in relation to proposed claims against insurers and insurance brokers arising out of liabilities for pensions misselling.
- Advised on indemnity and construction issues arising in relation to a mutual insurer.
- Advised on product liability insurance coverage issues between primary and excess insurers in high value dispute.
- Advised a regulatory body in relation to insurance issues potentially arising from a proposed form of regulatory action.
- Expertise in section 51 applications for costs against insurers *Cormack v Washbourne* [2000] Lloyd’s LR PN 459, CA and *Gloucestershire Health Authority v Torpy* [1999] Lloyd’s Reinsurance Law Reports 203 (excess layer).

Leigh-Ann chaired and was a speaker for Lexis-Nexis Insurance Law Webinars in 2011 and is a regular speaker on liability insurance issues.

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## Costs

- Leigh-Ann appeared in *Cabvision v Feetum, Marsden & Smith & Dean & Dean Solicitors (FMS v Jens Hills Solicitors)* Chancery Division, Norris J (2010) which considered recoverability of solicitors' costs of pursuing wasted costs proceedings against third parties when not covered by CFA in respect of the main action.
- Appeared for Respondents in *Carlton Grove v Rubin Lewis O'Brien* relating to the recoverability of additional liabilities (success fee and insurance premiums) where there existed breaches of Section 32.5 Costs Practice Direction.
- Appeared on appeal to Court of Appeal which held that the claimants in a group action where there was no group litigation order could recover generic or common costs under the terms of a CFA without any need for an additional or collateral agreement relating to generic costs: *Russell Young v. Kevin Brown & ors* [2008] 1 WLR 525.
- Leigh-Ann has advised on and drafted costs sharing orders in relation to several group actions.

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## Product Liability

Leigh-Ann is described by the directories in relation to this field as "...an incredibly good appellate advocate. She is prodigiously hard-working and possesses both a first-class brain and very sound judgment", "Formidably intelligent and very user-friendly, she has built up her specialist knowledge of pharmaceuticals very impressively", "extremely bright", "dedicated" and "tenacious with the opposition".

### Commercial products:

- *Grundon Waste Management Ltd v Hygrade Industrial Plastics Ltd* (2012): Leigh-Ann acted for the claimant in this multi-party action in the TCC arising out of an overheating incident and associated fires at a waste management facility.
- *Costain Oil & Gas Process Limited v. Barton Firtop Engineering* (2008-2010): Leigh-Ann advised on and settled pleadings in a commercial product liability claim arising out of manufacture and supply of temporary industrial strainers for use in gas pipelines.
- *Kent County Council v. Griggs & ors; Aviza v Welsh Electrical & ors* cases: Defended an electrical wholesaler, Newey & Eyre, in relation to commercial product liability/fire claims arising out of allegedly defective capacitors in light fittings.
- Advised on claims arising out of the testing and manufacture of a defective building insulation product.

### Ionising radiation:

- Appeared at the limitation trial and subsequent appeals to the Court of Appeal and Supreme Court for the Ministry of Defence in a major group action by over 1000 former servicemen arising out of the nuclear tests in Australia and the South Pacific in the 1950s: *AB & ors v Ministry of Defence* [2009] EWHC 1421; (2011) 117 BMLR 101, CA; [2012] 2 WLR 643, SC.
- Currently appearing on various war pensions appeals by veterans to the Upper Tribunal.

### Pharmaceuticals and blood products:

- Advised on potential product liability claim arising out of a monoclonal antibody.
- Advised on a claim relating to dopamine agonists/compulsive gambling in relation to Parkinson's Disease treatments.
- Advised in relation to The Foetal Anticonvulsant Litigation.
- Advised in relation to AIDS/HIV and Hepatitis C Haemophiliacs litigation.
- Defended a parallel importer in relation to a pharmaceutical claim relating to an allegedly defective patient information leaflet.
- Defended the Committee on the Safety of Medicines in the Aspirin/Reye's Syndrome case: *Amanda Smith v Secretary of State for Health* [2002] Lloyd's Med 305.
- Acted in The Human Growth Hormone/CJD Litigation in relation to both those who had contracted CJD and claims by the "worried well" ((2000) 54 BMLR 1, 79, 85, 95, 100, 103, 104, 111; [2000] Lloyd's Rep Med 161).
- Leigh-Ann also carries out specialist advisory work in relation to pharmaceutical regulation and legal risk management for producers, insurers and regulatory bodies.
- Leigh-Ann is Consultant Editor and contributes the Civil Liability and Public Law Liability chapters of *The Law and Regulation of Medicines* (OUP, 2008) and regularly lectures on product liability issues.

### Chemicals:

- Between 2003 and 2008, Leigh-Ann represented the Ministry of Defence in the Porton Down litigation dealing with a 6 ½ month inquest in 2004, a subsequent judicial review and claims arising out of non-therapeutic human experimentation with chemical warfare agents. The litigation involved extensive expert evidence on toxicology and the development of bioethics during the last 60 years.

### Food:

- Between 2000 to date, Leigh-Ann has acted on behalf of the Department of Health and DEFRA in relation to claims arising out of BSE/vCJD.

#### Medical devices

- The PIP Breast Implant Litigation. Leigh-Ann acted on behalf of a clinic defendant in this group action arising out of the use of industrial (as opposed to medical) grade silicone in breast implants by a French company.
- Advised a major multinational company in relation to its regulatory obligations and a possible product recall of a medical device.
- Advised a manufacturer of cosmetic dermal fillers in relation to claims against it arising out of granuloma formation.
- Advised claimant in relation to allergies alleged to be the result of PPD in hair dye.

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## Public Law and Human Rights

Leigh-Ann is listed by The Legal 500 as a Leading Silk in Administrative and Public Law (including Local Government), Leigh-Ann has advised and acted in relation to a number of judicial review cases or civil claims which have raised public law or human rights issues. She has experience of advising on public law issues over inquest procedures, legal complaints procedures, claims against the Financial Services Ombudsman, property issues, health policy and immigration law. She also has experience of tribunal and regulatory law.

- In her role as First Counsel for the Welsh Government, Leigh-Ann advises on constitutional law issues in relation to the Welsh devolution settlement and other public law issues of major importance.
- Acting on behalf of the Ministry of Defence in relation to an appeal to the Upper Tribunal against the First-tier Tribunal (Armed Forces Compensation and War Pensions Chamber)'s decision not to award pensions to certain veterans of the nuclear tests in Australia and the South Pacific in the 1950s. The appeal raises jurisdictional issues regarding the legal test to be applied by the First-tier Tribunal and the Upper Tribunal's powers of review.
- Advised in relation to a legal challenge to the grant of marketing authorisation in respect of a pharmaceutical product under EU and domestic law.
- She successfully defended a judicial review claim on behalf of the Secretary of State for Health by various claimants and a further claim made by 2 interested parties which sought to challenge the vCJD Compensation Scheme: ; *R (on the application of McVey & ors) v Secretary of State for Health* (2010) Med LR 204 (main claim); *R (on the application of McVey & ors) v Secretary of State for Health & (1) Jonathan Simms (2) Holly Mills (Interested Parties)* [2010] EWHC 1225 (Admin) (interested parties' claim).
- Advised on procedural/human rights issues arising from first instance and Court of Appeal judgment in relation to an appeal to the Supreme Court.
- Acted for a local authority challenging the expropriatory effect of legislation: *R (Lord Chancellor) v Chief Land Registrar* [2006] QB 795.
- Acted for the Ministry of Defence as claimant challenging a jury direction in an inquest: *R (Ministry of Defence) v Wiltshire and Swindon Coroner* [2006] 1 WLR 134.
- Advised in relation to potential judicial review challenges to a proposed consumer redress scheme in the financial services context and the administration by two professional bodies of their statutory compensation funds.
- Advised on regulatory obligations to a major multinational manufacturer of a medical device and the statutory duties of relevant regulators.
- Currently acting for the Ministry of Defence in relation to issues of combat immunity and procurement in the context of claims by service men and women for noise-induced hearing loss caused during or in preparation for operational deployment.

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## Mediation

- Leigh-Ann has been a CEDR accredited mediator since 1998. She regularly acts as a commercial mediator, with a particular specialism in mediating professional liability disputes. Her skill set, and in particular her negotiation and interpersonal skills, are well suited to mediation.
- Her mediation experience includes disputes involving unrepresented parties as well as multiple parties.
- She also has extensive experience as counsel in mediation, in particular in the fields of professional liability, product liability and commercial disputes, advising on strategy and leading the negotiations on behalf of clients, including in relation to two very high value group actions.
- Leigh-Ann's Mediation Agreement and Information Form are available on request.

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## Arbitration

- Leigh-Ann has acted and accepts instructions to act both as an arbitrator and as an expert determiner in insurance and commercial disputes which the parties have agreed or wish to resolve in a confidential forum.
- She has recently appeared as counsel in a very substantial international arbitration arising out of a high-value and

complex IT contract.

- Leigh-Ann contributes articles in the field of arbitration law to Lexis PSL *Arbitration*.
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