

SONIA NOLTEN

Call 2002

Get in touch

snolten@2tg.co.uk

+44 (0)20 7822 1200

Practice Overview

A "ferocious cross-examiner" who "impresses with her attention to detail...her commerciality [and] her first-class knowledge of the law", Sonia is a tough and experienced commercial dispute practitioner specialising in insurance, professional negligence and property damage (all areas for which she is recommended in the directories).

She has been involved in a succession of high-profile cases, including appearing in the Supreme Court in the Employers' Liability Trigger Litigation.

The directories say:

"Has great authority in court."

"Someone to have on your side when facing a difficult judge."

"Brilliant with clients, very user-friendly and professional."

"Clever, clear and a very good barrister."

"Hugely impressive."

"Combines great academic knowledge with practical common sense and commerciality."

"Tactically astute."

"Highly intelligent and commercially very astute...fabulous at papers and an excellent advocate."

"Approachable, practical and commercial."

"Exceedingly clever and down to earth with it."



**"Approachable,
practical and
commercial"**
(Chambers UK)

Practice areas

Commercial Dispute Resolution
Insurance & Reinsurance
Life & Health Insurance
Professional Negligence
Property Damage

Memberships

TECBAR
PNBA
LCLCBA
British Insurance Law Association
Health Claims Forum (HCF), Associate

Education

Oriel College, Oxford (MA, Double First), Master of Studies

Appointments

Treasury Panel of Counsel, 2009-14

Junior, and now Senior Bar Auditor of the Inner Temple, responsible (together with the other 3 Auditors) for overseeing the Inn's finances.

Additional Information

Before coming to the Bar, Sonia lectured in English Literature at the University of Oxford; her research interest was Restoration theatre, literature and social history, with a particular focus on the Duke of Monmouth and his Rebellion.

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Commercial Dispute Resolution

Sonia has a lively commercial litigation practice, and has been instructed in numerous commercial disputes, including arbitral proceedings, raising issues including:

- Restitution.
- The construction and validity of clauses including penalty and liquidated damage clauses.
- Guarantees.
- Undue influence and capacity to contract.
- Rectification.
- Misrepresentation.
- Evergreen contracts.
- Construction of joint venture agreements and of letters of credit.

Sonia is frequently instructed in claims raising allegations of fraud in a commercial context, including employee or director fraud, and giving rise to claims in deceit, and for breach of fiduciary duty, breach of trust, knowing receipt, dishonest assistance, conspiracy, conversion and receipt of bribes.

She has acted for and against banks in a range of banking and financial services claims including: fairness of standard terms, breach of mandate, bills of exchange, and the obligations imposed by FSMA and POCA.

Insurance & Reinsurance

Sonia has very significant experience in insurance and reinsurance, and has been listed in Chambers UK as a leading junior in this area for many years.

Sonia is regularly instructed in:

- Disputes arising out of a wide range of covers (professional indemnity, business interruption, public liability, EL, litigation protection, property, art, and consumer).
- Construction and coverage disputes.
- Subrogation and assignment issues.
- Non-disclosure (in both the commercial and consumer context).
- Joint insurance.
- Contribution between insurers.
- EU regulatory matters.
- Fraudulent claims.

She is particularly sought after for her expertise in life and health insurance (see further below).

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Sonia is also well-recognised for her expertise in EL and PL (including many issues such as whether PL or EL responds to a loss, historic gaps in EL cover, and the circumstances in which EL claims can be declined or cover avoided). She represented MMI from first instance all the way through to the Supreme Court in the *EL Trigger Litigation* [2012] UKSC 14. This £150m+ litigation, twice named by *The Lawyer* as a "Top Ten Case" of the year, concerned the liability of EL insurers to pay for asbestos-related disease arising out of exposure many years previously, and provided an important clarification of the law on the admissible factual matrix, commercial purpose, and the parameters of custom and practice. She also appeared in the leading case on policy triggers in public liability insurance, *Bolton Metropolitan MBC v Municipal Mutual Insurance Ltd* [2006] 1 WLR 1492.

Life & Health Insurance

Sonia's work on life, income protection and permanent health insurance is an important part of her insurance practice, with Chambers UK noting that she "is a junior of choice for many major insurers" in this highly specialised niche market. She is regularly instructed on large value and complex claims, often against leading counsel.

In addition to relatively straightforward income protection/PHI cases where the extent of disability is disputed, Sonia has substantial experience of the more factually and legally complex disputes which arise under this class of insurance. She regularly advises on group policies, privity of contract between insurer and employee, and limitation (an issue of particular complexity given that the obligation is usually to pay benefit monthly).

On the life/critical illness side, she has dealt with fraudulent claims, suicides (including inquests), murder of one life insured by another, disputes between insolvent policyholders and their trustees in bankruptcy, policies written under trust and cases raising issues of joint/composite insurance.

Sonia has also, very unusually, represented insurers in a judicial review of the Financial Ombudsman Service for (among other matters) making determinations which wrongfully had the effect of overriding FOS's financial limit.

Professional Negligence

Sonia has been listed as a leading junior for professional negligence every year since 2010. Over the years she has litigated professional negligence actions of all kinds including:

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- Claims involving property damage and construction professionals (structural engineers, architects, building control inspectors, quantity surveyors, project administrators).
- Claims against brokers and financial advisors, requiring her insurance/banking expertise.
- Claims with an underlying chancery/commercial flavour, where allegations of fraud have been made or when professional indemnity cover is disputed.
- Numerous valuer claims, testing the boundaries of contributory negligence by lenders (prime and otherwise), and advising on the complex issues which arise when fraudulent conveyancing is suspected, or the loan in question has been assigned and/or securitised.
- Claims in which the "percentage chance of a better outcome" approach was challenged because the counterparty to a commercial transaction gave evidence, raising the question of what the counterparty would have done should be decided on the balance of probabilities.

Sonia has also represented both lawyers and their clients in many contexts, particularly where fraud or coverage issues are in play.

Property Damage

Sonia has been listed as a leading junior for property damage every year since Chambers UK introduced the category. Over the years she has litigated damage claims of all kinds including:

- Large commercial fires arising from defective design, products and working methods, from failed fire suppression measures and from use of equipment or appliances known to be defective.
- Domestic fires caused by a wide range of appliances including golf cart batteries, fridges, TVs and tumble dryers.
- Fires resulting from arson or carelessly discarded smoking materials.
- Indoor floods caused by air conditioning units, LTHW systems and defective pipework.
- Outdoor floods involving culverts, drains, bunds and highways, and floods caused by changes to the topography of an area during building development.
- Nuisances arising from spread of fire, *ignis suus* and escape of dangerous substances.
- Nuisances involving loss of amenity, business interruption and financial loss.
- Nuisances with a real property element, such as interference with easements, trespass, and claims where one or both parties' interest in land is via adverse possession.

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- Subsidence and landslips.
- Coverage disputes under CAR, public liability, PI and other policies.
- Cross-over claims involving liability of professionals, especially in the construction field.

Significant Cases

Moda International Brands Limited v Gateley plc [2019] EWHC 1326 (Ch). Professional negligence action arising out of the drafting of a joint venture agreement. Raised the question of whether the Court should adopt a “percentage chance” approach to the assessment of damages when the counterparty had (unusually) given evidence at trial as to what he would have done had he been presented with a non negligently drafted JV agreement. (Instructed by BLM).

Friends Life v Miley [2019] EWCA Civ 261. Appeal against the decision below on policy construction grounds. Considered the scope of the insured’s obligation to disclose information about other income, and the extent to which that obligation was modified by a declaration which stated that the insured “believed” that the information was provided was true (Instructed direct by Friends Life, led by Caroline Harrison QC and leading Luka Krsljanin).

Miley v Friends Life Limited [2017] EWHC 2415 (QB). £1.5 million income protection/permanent health claim raising issues of capacity to carry out employment and fraud, in that the insured had been seen on surveillance footage engaging in activities significantly in excess of what he had declared himself able to do. (Instructed direct by Friends Life, led by Caroline Harrison QC and leading Luka Krsljanin).

Miley v Friends Life Limited [2017] EWHC 1583 (QB). Judgment exploring the scope of a Judge’s obligation to recuse himself for apparent partiality. (Instructed direct by Friends Life, led by Caroline Harrison QC and leading Luka Krsljanin)

Rai v Legal & General Insurance Limited [2015] EWHC 170 (Comm). Life insurance case in which the life insured had moved to the Mumbai office of his employer, and ceased to be insured under the UK group life insurance policy. The issues included what, on a true construction, was meant by “permanently employed” outside the UK when there was a possibility, albeit not guaranteed, of a future return. (Instructed by Eversheds Sutherland International LLP).

Co-Star v Red Leads and others [2014] EWHC 1262 (Ch). Justification for making a costs order against a party who had objected to being jointed as a defendant; the party argued that there was no jurisdiction to make a

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costs order because he had not been a party until the moment when he was joined and could not be made liable for costs incurred prior to that moment (Instructed by Gateley plc).

Bate v Aviva [2013] EWHC 1687 (Comm). Insurance claim raising FSMA issues concerning possible routes of recovery for damages for late payment of damages; alleged misrepresentation and non-disclosure on inception, breach of condition precedent. (Instructed by Neumans LLP, led by Neil Moody QC).

Smyth v St Andrews Insurance [2012] EWHC 2511 (QB). Insurance claim in which D alleged that the fire was caused by arson on the part of the policyholder's partner. (Instructed by Kennedys LLP).

BAI (Run off) Limited (In Scheme of Arrangement) v Durham (and 5 other actions) [2012] UKSC 14. More familiarly known as the "**EL Trigger Litigation**" – leading case on policy triggers in employers' liability insurance and also offered an important clarification of the law of construction of contracts, factual matrix and commercial purpose. The first case to consider the Employers' Liability (Compulsory Insurance) Act 1969 at Supreme Court level. (Instructed by Watmores, led by Howard Palmer QC).

Municipal Mutual Insurance Company Ltd v Zurich Insurance Company and 10 others (and 5 other actions) [2010] EWCA Civ 1096. MMI's appeal against the first instance judgment on various points of construction, in which it was successful in part. (Instructed by Watmores, led by Howard Palmer QC).

Dennard v PricewaterhouseCoopers LLP [2010] EWHC 812 (Ch). Alleged negligent undervaluation of a PHI company by £25-£40m; leading recent case on application of band theory to valuers' negligence claims. (Instructed by Allen & Overy, led by Paul Downes QC).

Titan Steel Wheels v Royal Bank of Scotland [2010] EWHC 211 (Comm). Acting in connection with the bank's appeal against the judgment of David Steel J in a case concerning the fairness of the bank's standard terms and conditions on a currency swap contract. (Instructed by Gateley Wareing LLP, led by Paul Downes QC).

Municipal Mutual Insurance Company Ltd v Zurich Insurance Company and 10 others (and 5 other actions) [2008] EWHC 2692; aka the EL Trigger Litigation. First instance judgment clarified the current state of medical thinking concerning the "5/10 year rule" for causation in mesothelioma claims. (Instructed by Watmores, led by Howard Palmer QC).

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Thomson v Berkhamsted Collegiate School [2009] EWHC 2374 (QB). Whether school under a duty to detect and/or prevent bullying which had not been reported to it and which was unknown to parents. Leading authority on costs orders against non-parties. (Instructed by Berryman Lacey Mawer, led by Andrew Miller).

Bolton Metropolitan MBC v Municipal Mutual Insurance Company Ltd and another [2006] 1 WLR 1492; [2006] 1 LRIR 15 (CoA, QBD). The leading case concerning policy triggers for public indemnity insurance; also leading authority concerning contribution between successive insurers. (Instructed by Watmores, led by Howard Palmer QC).

Bright v Barnsley District General Hospital NHS Trust [2005] Lloyds Rep Medical 449. Cerebral palsy case raising complex causation issues: probability of better outcome at the time of each negligent act was over 50%, but cumulative probability of a better outcome less than 50%. (Instructed by Weightmans, led by Michael de Navarro QC).

Recommendations

Recommended in the legal directories for insurance & reinsurance, property damage and professional negligence.

"Very impressive and persuasive on her feet and excellent with clients."

"She has great authority in court."

"Very good on her feet."

"Brilliant with clients, very user-friendly and professional."

Chambers UK 2019

"Clever, clear and a very good barrister."

"Hugely impressive."

Legal 500 2018

"Her pleadings are extremely good and very detailed. She takes all the points that can be taken and is extremely on the ball."

"Combines great academic knowledge with practical common sense and commerciality"

"Very quick on the uptake."

"Tactically astute, very thorough on the papers, commercially minded and excellent with clients."

Chambers UK 2018

"Someone to have on your side when facing a difficult judge."

"Highly intelligent and commercially very astute, she is fabulous at papers and an excellent advocate."

Legal 500 2017

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"Approachable, practical and commercial."

"One of those people who is exceedingly clever and down to earth with it. She's practical in terms of not wasting time on peripheral stuff and being good at cutting to the key issues."

"Extremely hard-working and reliable, she has a good understanding of the technical and evidential issues relating to claims involving land movement."

Chambers UK 2017

"Provides practical advice, high-level technical expertise and responsiveness."

"Her advice – whether oral or in writing – is always clear and concise."

Legal 500 2016

"Very good technically, knows her subject very well and is an excellent advocate who pays attention to the details."

"Intelligent and takes great pride in getting the answer to any question you pose her."

Chambers and Partners 2015

"Combines a pleasant manner with a comprehensive and thorough approach."

Legal 500 2014

"A commercial litigator who has considerable experience in the insurance field."

"Commentators note her expertise in TCC claims relating to floods, fires and explosions." "Impresses with her attention to detail and her commerciality."

"Meticulous and has a first-class knowledge of the law. She is extremely good in court and a ferocious cross-examiner."

"Specialises in life insurance matters, and is a junior of choice for many major insurers"; "Provides good technical analysis of the issues, and is very thorough."

Chambers UK 2014

"Extremely hardworking" **Legal 500 2013**

"A 'responsive and clear-thinking' advocate" **Legal 500 2012**

"Standout junior" **Legal 500 2011**

"Highly recommended" **Legal 500 2010**

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