

HOWARD PALMER QC

Call 1977

Silk 1999

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*"Intelligent,
articulate,
unflappable and
calm"*

(Legal 500 2017)

Practice Overview

Howard Palmer is joint leader of the Insurance and Reinsurance practice at 2TG and our most experienced Silk in the area of Travel and Jurisdiction.

His practice also encompasses professional negligence, sports law, construction and property damage, and personal injury.

Chambers UK and the Legal 500 have recommended Howard as a Leader in his chosen fields for many years. He is noted to have "*...an agile mind and an ability to cope with whatever the judge throws at him*"; and is admired "*for his cool, calm and collected approach in the courtroom, his ability to reassure clients, and his skilled analysis of complex insurance and liability issues*".

Howard's experience includes major appeals in the House of Lords (*Harding v Wealands*; *Haward v Fawcetts*) and in the Supreme Court (*Durham v BAI – the Employers' Liability Trigger Litigation*).

Insurance and Reinsurance

Both 2TG and Howard Palmer are recommended as leaders in the field of insurance and reinsurance in Chambers UK and the Legal 500.

Howard's practice includes:

- Major disputes on policy wordings, particularly in the field of asbestos liability risks (see *Cape Insurance PLC v Iron Trades Employers' Insurance Assn*; *Bolton MBC v Municipal Mutual*; and *Durham v BAI (the EL Trigger Litigation)*).
- Repudiations of liability for fraud, non disclosure, misrepresentation, breach of warranty, failure to comply with conditions precedent, etc.

Practice areas

Insurance & Reinsurance
Travel and Jurisdiction
Professional Negligence
Property Damage
Personal Injury
Clinical Negligence
Motor Insurance
Product Liability
Sport

Memberships

LawInSport
BASL
COMBAR
LCLCBA
TCC
PIBA

Qualifications

MA (Oxon)

Education

University College, Oxford
University



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- Waiver of the right to avoid.
- Enforcement of insurance rights by third parties (see *Charlton v Fisher*), in the context of
- Road Traffic Act liability (see under "Motor"), employers' compulsory insurance, public liability insurance.
- Aggregation, and application of multiple deductibles.
- Liability under PHI and critical illness policies.
- Insurance recovery actions in cases with complex technical element (eg flooding; electrical malfunctions; fires; see *Arscott v The Coal Authority*; *Bybrook Barns v Kent CC*).
- Limitations on rights of subrogation against co-assureds – particularly under the standard form of building contracts (see also under International Arbitration & Projects).
- Insurance liability and recovery in foreign jurisdictions; direct rights of action against insurers (see under "Travel & Jurisdiction").

Howard has been instructed to give expert evidence on the English insurance law of non-disclosure and misrepresentation to the US courts.

He concluded the appeal to the Supreme Court in the Employers' Liability Trigger Litigation.

Travel and Jurisdiction

Howard Palmer has conducted many high-profile cases in the constantly evolving area of law concerning the jurisdiction of the English courts over foreign claims and the law applicable to the resolution of claims with a foreign element.

Under the Private International Law (Miscellaneous Provisions) Act 1995, he acted for the respondent in the landmark House of Lords appeal in *Harding v Wealands* [2007] 2 A.C. 1.

He has also been involved in many disputes on whether English or foreign law is applicable to claims arising in foreign jurisdictions – *Hamill v Hamill* – Spain or England?; *Beauregard v Sturrock* – England or Florida?; *Wortham v Deerhurst Resorts* – England or Ontario? The temporal application of Rome II was successfully argued in *Bacon v Nacional Suiza* before Tomlinson LJ in 2010 – the only English decision on the question before the CJEU came to its decisive ruling in *Homawoo*.

On issues of jurisdiction, Howard is expert in the application of the Brussels Regulation (44/2001) as well as CPR Pt 6 (service out of the jurisdiction). He has advised extensively on available jurisdictions for:

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- Contractor/Sub Contractor disputes regarding accidents in the Netherlands (*Moore v HCI*)
- Claims against a Canadian ski resort for injuries sustained there
- Claims for Road Traffic Accidents in various states of Australia (*Cooley v Ramsey* – QBD)
- Disputes where proceedings are already extant in another jurisdiction (*Knauf UK v Fritz Peters AG* – C.A.)

Other cases include:

- Clinical negligence in South Africa
- Clinical product liability in Ireland, Australia and USA
- Tetraplegia caused on a yacht in Portuguese territorial waters, subject to protection under the Merchant Shipping Acts
- Athens Convention cases
- Plane crash in Minnesota, USA
- Claim for injury at airport, subject to the Montreal Convention
- Claim in Brunei ancillary to insolvency in that state
- Various Road Traffic Accidents in Spain, Rumania, France, Greece, Germany and Lithuania.

Professional Negligence

Recommended in the Legal 500 in professional negligence ("*First Rate*"), Howard's experience encompasses litigation in the fields of insurance professionals, architects and engineers, construction services, solicitors and accountants.

He appeared for the successful appellant accountants in the House of Lords in *Haward v Fawcetts*.

Other reported cases of note include:

- *John Mowlem v Neil F. Jones* (CA), *George Fischer v Multi Design and DLE* (TCC – HHJ Hicks QC); *Gray & Ors. v T P Bennett & Son and Ors* (TCC).

Property Damage

Howard Palmer has experience of most of the major national and international forms of Building and Engineering Contracts: JCT (and DOM, NSC and NFBTE/FASS forms of sub contract), ICE (and FCEC forms of sub contract), CRINE General Conditions for Offshore Services, FIDIC forms, I Chem E forms, GC Works forms, NEC form, Hong Kong GC form, Singapore Institute of Architects form.

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Howard also deals with arbitration and court control of arbitral proceedings under domestic and international regimes (see *Birse Construction Ltd. v St. David Ltd.* (CA), *Jones v Thyssen* (CA), *John Mowlem v Carlton Gate* (TCC)).

Howard has been instructed in heavy engineering and civil engineering disputes (oil rig construction, shipbuilding, marina construction, subsea engineering etc).

Howard is particularly skilled in litigating disputes with a high technical content (weld failures, fatigue cracking, steel erection and piling failures, bearing seizures, fires, electrical and electronic control failures etc).

He has conducted several high-profile flood cases, including *Bybrook Barn Centre Ltd. v Kent C.C.* and *Arscott v The Coal Authority* in the Court of Appeal. "His involvement in the Hazelwood [flooding] case highlighted his 'absolutely terrific' skills in dealing with complicated scientific matters" (Chambers UK recommendation as a leading Silk).

Other property damage specialities include tree root law (*L E Jones v Portsmouth* (CA [2003] 1 W.L.R. 427); *Kirk v London Borough of Brent* (CA [2005] EWCA Civ 1701); *Berent v London Borough of Islington* (CA Case No: A1/11/1575, 20.3.12).

Personal Injury & Clinical Negligence

Howard has very wide experience of more than 30 years of all aspects of personal injury and clinical negligence. He combines this experience with his expertise in understanding and analysing complex mechanical processes in the context of catastrophic injury claims. His understanding of the formation of mesothelioma and the liability of employers and others for asbestos-related diseases has enhanced his ability to deal with the complex insurance issues which arise.

Similarly, comparison between foreign and domestic legal systems for the assessment of damages requires a firm grounding in the domestic system, as well as an ability to deal with expert evidence on foreign law (he "converses well with experts" – Legal 500).

Examples of particular cases include:

- *Craig & Ors v Railtrack plc & Ors* (multiple fatalities due to bearing failure on railway carriage)
- *Jolley v London Borough of Sutton* (House of Lords – foreseeability of damage in unforeseeable circumstances)

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- *DoT v HPC Coatings & Ors.* (TCC – multiple fatality caused by collapse of gantry)
- *Hanson v Airedale Hospital* (clinical negligence – failure to diagnose possible heart attack)
- *Williams v London Borough of Lewisham* (causes and effects of long-term Carbon Monoxide emissions)

Motor Insurance

Howard's expertise in insurance, foreign claims and personal injury is put together in dealing with complex issues relating to motor insurance, against the background of the measures imposed by the Road Traffic Act 1988 and the content of the Motor Insurance Directives emanating from Europe.

He has acted both for and against uninsured motorists and the MIB. He was instructed in the Supreme Court appeal in the case of *Jacobs v MIB* [2011] 1 WLR 2609, concerning a victim pursuing the MIB in the UK for compensation for an accident with an uninsured driver in Spain.

He acted for insurers (Churchill) in the Court of Appeal in *Charlton v Fisher* [2002] QB 578, where insurers were found not liable to indemnify a driver who had deliberately rammed another car; and for insurers in *Bristol Alliance v Williams* (CA 5.3.2012) where the driver had deliberately rammed a shopping mall in an attempt to commit suicide. He also acted in an intra-insurer dispute in *General Accident v Toms and Provincial Insurance* (QBD, Scott Baker J) as to which of two insurers were liable to indemnify a negligent driver.

Howard has also conducted cases on the liability of foreign insurance companies to provide indemnity to their insureds, or to provide compensation direct to victims, in the context of proceedings brought within the jurisdiction of the courts of England and Wales.

Product Liability

Regularly advises in high profile Product Liability cases.

Sport

Howard Palmer uses his considerable experience in sensitive commercial disputes and insurance law in all aspects of his sports practice. His expertise is well suited to litigation which explores the interface between liability for sports injuries and recovery under insurance policies, regularly

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advising and appearing in court in cases involving complex contractual interpretation.

Although his practice extends to a wide range of sports, he has a particular interest in motorsports, watersports, skiing, riding and shooting.

Howard sits as a Recorder in criminal cases. As well as civil and (some) criminal court work he has experience of most forms of arbitration and ADR.

Howard is a keen cricketer and member of the MCC.

Wagenaar v Weekend Travel Ltd. – skiing accident rendering Claimant tetraplegic – successful defence of ski instructor in High Court Action – issues of French law and skiing standards in French Alps (Winchester High Court).

R v A (confidential) – Acting for claimant rendered tetraplegic in yachting accident off the coast of Portugal; allegations concerned complex issues of sailing technique (Admiralty Court – settled before hearing).

Cripps v Goodman – Riding accident on a road; management techniques of rider when trying out horse for first time; acted for successful Defendant (CA)

Significant Cases

Amedeo Development Corp. SDN BHD v HRH Prince Jefri Bolkiah; Bandone SDN BHD v Amedeo Development Corporation Sendiran Berhad and Berakas Power Company Sdn Bhd: High Court of Brunei Darussalam; October 2001 (concerning the meltdown of the Prince Jefri "empire" in Brunei).

Arscott v The Coal Authority QBD – Royce J; July 2003; [2003] EWHC 1690 (QB) (Casetrack) C.A.; July 2004; [2004] EWCA Civ 892: Flood damage caused by overtopping of the River Taff at Aberfan – the "common enemy" defence.

Aspen Insurance v Adana QBD Commercial Court (Burton J, Hamblen J.) – in progress: Insurers' liability under a public and products liability policy to indemnify insured potentially responsible for crane collapse.

Bacon v Nacional Suiza QBD – (Tomlinson LJ) [2010] EWHC 231; C.A. Arden, Moore Bick Etherton LJJ (29.6.11): Whether Rome II applied to accident occurring in 2008.

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Bansals Ltd v GRE Birmingham Mercantile Court: Fraudulently exaggerated claim for fire damage to bathroom store.

Beauregard v Sturrock QBD; 2007 – settled: Helicopter accident on a flight from Minnesota USA to Wisconsin USA; whether English or Florida Law applied.

Berent v London Borough of Islington CA – Mummery, Tomlinson and Kitchin LJJ 20.3.12: Tree root damage after Delaware).

Bertenshaw v First Choice (Mövenpick, Third Party) QBD – May 2012: Claim under Package Travel Regulations, which defendant sought to pass on to party responsible for hotel.

Bilfinger + Berger UK Ltd and Birse Construction Ltd v Croda Mebon Ltd QBD (TCC) – HHJ David Wilcox: Massive paint failure on structural steelwork; collateral contract and duty of care in tort; re. Didcot B Power Station).

Birse Construction Ltd v St David Ltd QBD (TCC) – HHJ Humphrey Lloyd Q.C.; Feb 1999; [1999] BLR 194 C.A.; Nov 1999; [2000] BLR 57 – Pill, Aldous and Ward: LJJ stay under section 9 Arbitration Act 1996.

Birse Construction Ltd v St David Ltd QBD (TCC) – Mr Recorder Colin Reese Q.C.; August 2000; Whether a contract came into existence.

Bolton v Municipal Mutual Insurance QBD (Manchester Mercantile Court – HHJ Kershaw Q.C.); 2004-5; C.A.; [2006] 1 WLR 1492: Policy trigger in a mesothelioma case under a public liability policy.

Breitschwerdt v Highway Insurance Co Ltd (QBD, 2008): German student injured in accident in Scotland but issues of German law arising.

Bristol Alliance v Williams QBD Tugendhat J., June 2011; C.A. Ward, Macfarlane LJJ and Dame Janet Smith, 5.3.2012: Extent of liability under s.151 RTA 1988 and European Motor Insurance Directives.

Bybrook Barn Centre Ltd v Kent CCC.A. [2001] BLR 55 – Peter Gibson & Waller LJJ, Jonathan Parker J: Liability of highway authority for bridge/culvert obstructing river flows.

Cape Industrial Services Ltd v Royal & Sun Alliance Insurance PLC QBD Comm Ct. (2003): Liability for asbestos exposure under public liability policies.

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Cape PLC v Iron Trades Employers' Insurance Association; QBD Comm. Ct. (Rix J); [2004] Lloyd's Rep IR 75: Liability under 1960s policy which excluded asbestosis but not mesothelioma).

Charlton v Fisher C.A. [2001] Lloyd's Rep IR 387; [2002] QB 578: Insurance for deliberate ramming by a motor car.

Conoco (UK) Ltd and anor v Campbell QBD (Garland J.);C.A. – Rix and Tuckey LJ; [2003] All ER (Comm) 35: Offshore PI claim for indemnity.

Craig & Ors v Railtrack plc & Ors QBD TCC; 2000 – 2001 Mechanical causes of derailment leading to multiple fatalities.

Darlington Borough Council v Wiltshier Northern Ltd QBD TCC (HHJ Newey Q.C.); C.A.; 1994; (1994) 69 BLR 1; [1995] 1 WLR 68. (Case listed for appeal to HoL, but settled before hearing): Liability in contractual assignment case, where assignor suffered no loss.

Dawkins v Carnival PLC CA (Pill, Moore Bick and Aikens LJ) – 27.10.11: Accident on cruise liner subject to Athens Convention.

Dept of Transport v HPC Coatings & Ors QBD TCC (HHJ Bowsher Q.C.) November 1998: Collapse of gantry off Severn Bridge – multiple fatality and massive economic loss claim by DoT.

Durham & Ors. v Builders Accident Insurance & Ors. (the EL Trigger Litigation) QBD – Burton J; 2008; [2009] Lloyd's Rep IR 295 C.A.; 2009 – 2010; [2011] Lloyd's Rep. IR 1 S.C. – Judgment 28.3.12 [2012] 1 WLR 867: Whether EL policy responded to injury sustained or injury caused during policy period.

Dymoke White v Chapman QBD – HHJ Richard Seymour Q.C. (October 2005): Brain injury case; periodical payments.

Eli Lilly & Co. v Gerling-Konzern Allgemeine Versicherungs A.G. United States District Court, Southern District of Indiana, Indianapolis Division (2006 – 2007): Expert witness on English law of Insurance; relating to Zyprexa product liability claim.

FACS (foetal anti convulsant syndrome) Litigation (Chappell v Royal Surrey County Hospital Trust): Threatened Group Litigation claim for foetal damage caused by anti convulsive drugs used to treat epilepsy in pregnant women. Proceedings averted.

Filobake Ltd v Rondo Ltd C.A. Chadwick, Buxton and Hooper LJ; [2005] EWCA Civ 563: Consideration of Sale of Goods legislation vis à vis supply of filo pastry making machine.

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General Accident v Toms and Provincial Insurance QBD – Scott Baker J: R.T.A, whether insurer of vehicle or insurer of driver liable to indemnify.

George Fischer v Multi Construction Ltd and Dexion Ltd QBD (TCC) – HHJ Hicks QC; Dec 1992; unrep. C.A.; 1994; H.L.; 1995; Petition for Leave dismissed: Recoverability of damage suffered by subsidiary of contracting party; foreseeability of damage at the time of contract.

George Fischer v Multi Design Consultants and Davis Langdon Everest QBD (TCC) – HHJ Hicks QC; Oct. 1997, judgment Mar 1998: Professional Negligence of Project Managers; Collateral Warranty by Design company under Design and Build Contract.

Gray & Ors. v T P Bennett & Son and Ors QBD (TCC) – HHJ Stabb Q.C.; Apr 1987; (1989) 43 BLR 63: Negligence of architects; Limitation Act 1980; deliberate concealment; accrual of cause of action; effect of Final Certificate.

Gulf Oil v CAIB UK Ltd QBD (TCC) – HHJ John Loyd Q.C. (June 1996): massive fire of petrol train due to defective bearings overheating.

Hanson v Airedale Hospital QBD (Leeds – Mr. Rec. G. Burrell Q.C.) May 2002. (against Charles Foster); instr by Hempsons: Clinical negligence – failure to diagnose possible heart attack.

Harding v Wealands QBD – Elias J; May 2004; unrep CA; 2005; [2005] 1 WLR 1539 HL; 2006; [2007] 2 AC 1, [2006] 3 WLR 83: Whether Australian caps on damages and method of assessment applied to English court's assessment of quantum when Australian law applied.

Haward v Fawcetts C.A.; Mar 2004; [2004] PNLR 658 HoL; 2005-6; [2006] 1 WLR 682: Limitation of Action in context of professional negligence by firm of accountants.

Hazelwood Caravans & Chalets Ltd v Devon CC and Teignbridge BC QBD: Dec 2005: Flood caused by inadequate culvert and flood relief scheme, the responsibility of defendants.

IBC Vehicles Ltd v Durr Ltd QBD (Garland J.) March 2000: Explosion in Vauxhall paint drying tunnel due to gas escaping into oven.

Jacobs v MIB [2010] EWCA Civ 1208; [2011] 1 WLR 2609; Laws, Moore Bick and Rimer LJ: MIB's liability to compensate a British resident who was the victim of an uninsured motorist in Spain.

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John Mowlem & Co PLC v Carlton Gate Development Co Ltd QBD (TCC) – HHJ Bowsher Q.C.; May 1990; (1991) 51 BLR 54: Stay under s.4(1) of the Arbitration Act 1950.

John Mowlem Construction Plc v Neil F. Jones & Co C.A.; June 2004; [2004] BLR 387, [2004] PNLR 45, [2007] Lloyd's Rep PN 4 – Judge, Tuckey and Kay LJJ: Solicitors' negligence; whether solicitor under a duty to advise its client about renewal of insurance.

Jolley v London Borough of Sutton QBD – Mr. Geoffrey Brice Q.C. sitting as Deputy HCJ; C.A., and House of Lords; [1998] 1 Lloyd's Rep. 433, [1998] 1 WLR 1546, [2000] 1 WLR 1082: Foreseeability of loss when a child played with a derelict boat on council land.

Jones v Thyssen (GB) Ltd QBD (TCC) – HHJ Bowsher Q.C.; Jun 1990; C.A.; July 1991; (1992) 57 BLR 116: Stay of proceedings under s.4 of Arbitration Act 1950; Pff too poor to afford arbitration.

Kirk v London Borough of Brent C.A.; Dec 2005; [2005] EWCA Civ 1701 – Pill, Wall and Lloyd LJJ: Property damage by tree roots; interpretation of decision in Delaware Mansions.

Knauf UK GmbH v British Gypsum Ltd & Anor QBD (Com. Ct.) – David Steel J.; 27th March 2001; C.A.; Jul 2001; [2002] 1 W.L.R. 907, [2002] 1 Lloyd's Rep. 191: Jurisdiction of English court where claimant obtained ex parte order for service by alternative means.

Knauf UK GmbH v British Gypsum Ltd & Anor (no. 2) QBD (Com. Ct.) – David Steel J.; Apr 2002; [2002] EWHC 739 (Comm): Jurisdiction of court to entertain contribution proceedings between foreign defendants.

L.E. Jones (Insurance Brokers) Ltd v Portsmouth CC C.A.; Nov 2002; [2003] 1 W.L.R. 427; Aldous and Dyson LJJ: Council's liability for highway trees.

Looker v Umberslade Corporate Management Ltd QBD – David Steel J.; June 2009: Director seeking indemnity under his own household and his company's EL policies for negligent injury to odd job man.

Lux v Clelland Associates QBD – Mr. James Badenoch sitting as deputy HCJ: Architects' negligence; scope of duty to "Project Manage".

Robinson v Avery Admiralty Court – Steel J. (2011 ruling on admissibility of expert evidence of sailing practices): tetraplegic victim of sailing accident off coast of Portugal; application of limits under Merchant Shipping Act 1995.

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Thomas v Sun Alliance Central London CC: Repudiation for fraud – “faked burglary”; man caught on video pretending to double lock door for expert; in fact he twisted keys the other way!

Williams v London Borough of Lewisham QBD – Mr. Walter Ayles Q.C. sitting as Deputy HCJ; Dec. 2000: Causes and effects of Carbon Monoxide emissions.

Wortham v Philips Electronics UK Ltd and Deerhurst Resorts Ltd QBD – HHJ Seymour Q.C.; 2004-2007.

Recommendations

Recommended in Legal 500 from 2007 to date and in Chambers UK from 2008 to date.

"His work process is very thorough and methodical and he easily identifies the issues."

"Very intelligent, articulate and a pleasure to work with. He is very thorough and methodical in his work process and easily identifies issues. His work ethic and responsiveness is very impressive."

"A very accomplished advocate."

Chambers UK 2021

"His attention to detail is impressive"

Legal 500 2021

Very impressive on paper and extremely experienced."

Extremely experienced and well respected."

He is very intelligent, articulate and highly approachable – a pleasure to work with. He is also very thorough and methodical in his work process and easily identifies the issues in a case." "A leading authority on cross-border cases."

Chambers UK 2020

"He is very academic and very charming"

Legal 500 2020

"Extremely knowledgeable and has a very sound judgment. He's very good in negotiations and is a top-flight practitioner."

"He has a lot of knowledge and experience"

Chambers UK 2019

"A big figure in the reinsurance world, who is very impressive and straightforward to deal with."

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"He is very good at thinking through all the issues and calculating the best way of presenting his case to the judge."

Chambers UK 2018

"Howard is highly approachable and a pleasure to deal with. He is very thorough in his approach and this is reflected in his advice."

"He is great at understanding the issues, knowing what the client needs to understand and making sure that they do understand it."

"Very methodical, very detailed and quite a cerebral character but also someone who it's easy to work with."

"He gets to the crux of the matter easily, deals with the relevant material and can separate the good points from the bad points."

"His advocacy is calm and assured."

"Howard is highly experienced and knowledgeable in cross-border personal injury cases."

Chambers UK 2017

"Intelligent, articulate, unflappable and calm."

"Excellent"

Legal 500 2017

"He knows everything there is to know about jurisdictional issues, his written advice is fantastic and he keeps a calm head in cases."

"He is extremely intelligent; you're never going to get anything past him and he is very tough."

"He is a calm and assured advocate."

Chambers UK 2016

"He has a track record of success and the ear of the court"

"Very good advocate"

Legal 500 2016

"He's clearly very knowledgeable and very thorough, and his written advice is excellent."

"A formidable leader and an excellent advocate who handled our case with outstanding competence."

Chambers UK 2015

"He is calm and exudes an aura of authority and competence; he does not let the other party ruffle him."

Legal 500 2015

"He is highly approachable and a pleasure to deal with."

"He is very thorough and this is reflected in his advice."

Chambers UK 2014

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"A thorough and effective advocate with a charming manner"

Chambers UK 2013

"Stands out for his 'constant responsiveness, quick turnaround times and excellent analysis of complex insurance and liability issues'"

Chambers UK 2012

"he is noted for 'his cool, calm and collected approach in the courtroom, his ability to reassure clients, and his skilled analysis of complex insurance and liability issues'"

Chambers UK 2011

"has 'an agile mind and an ability to cope with whatever the judge throws at him'"

Legal 500 2011

"recommended for his work relating to floods and flood damage, having acted as lead counsel in two major Court of Appeal flooding cases recently"

Chambers UK 2010

"he provides 'incisive commercial advice' and is 'brilliant on any case which involves complex issues of law and the analysis of policy wordings or statutes'"

Legal 500 2010

"his 'gravitas and fine legal brain' are noted as key strengths, as is his 'ability to turn his hand to anything complex'"

Chambers UK 2009

"excels in nuisance and flood related cases... 'absolutely terrific' skills in dealing with complicated scientific matters"

Chambers UK 2008

"converses well with experts"

Legal 500 2008

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