

# Johnathan Payne

Call: 1997

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Johnathan Payne is in demand to represent both claimants and defendants.

He undertakes most of his claimant work against silks. Before commencing at the Bar he worked in the City for Barlow Lyde & Gilbert (as they were then known) specialising in insurance risks for local authorities and insurers (ranging from serious injury in RTAs to defamation claims).

In practice Johnathan is known for his hard work, succinct presentation style and attention to detail. His case load regularly involves brain and spinal injuries. He has been regularly representing JD Wetherspoon Plc for the last 12 years on cases ranging from basic injury claims to tetraplegia and brain damage. He undertook the leading authority on expert shopping for JDW (*Edwards-Tubb v. JD Wetherspoon Plc*) and his knowledge of privilege and experts marks him out.

He has been involved in leading cases at first instance in the QBD and Court of Appeal ranging from the duties under the OLA 1957 (*Everett & Anor v. Comojo*) to the extension of the principle in *Wilkinson v. Downton* [1897] 2 QB.57 (C v. WH).

## Areas of Expertise

### Personal Injury

Instructed to represent seriously injury claimants and to defend insurers and corporate clients. Regularly instructed in multi-million-pound personal injury litigation involving brain and spinal injuries. Johnathan will often take on difficult personal injury claims which have been rejected by other counsel. He has advised in diverse litigation ranging from the Ladbroke Grove rail accident in 1999 to the current Covid-19 litigation in the Kings Bench Division.

Johnathan has been involved in cases of significance to the practice area including *Edwards-Tubb v. JD Wetherspoon* [2011] EWCA Civ 136 ('the expert shopping case'). He appeared alone before the Master of the Rolls and Lord Justice Hughes shortly before their elevation to the Supreme Court. This case remains the leading authority on conditional expert orders.

He has also been involved in litigation which defined the extent of the duty of care for the entertainment industry in England and Wales for instance in *Evertt v. Comojo (UK) Ltd* [2011] EWCA Civ 13.

He is regularly involved in high profile litigation which represents significant media reporting.

He has been granted permission to appeal on a pending case on the developing area of independent contractors and vicarious liability (temporary deemed employees).

#### Notable Personal Injury cases

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A v X

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Representing an insurer in a claim resulting from a fairly innocuous injury which it is said led to chronic pain resulting in the claimant becoming wheelchair-bound and dependant on others. The claim is pleaded at £5 million.

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B v X

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Representing the defendant in a claim resulting from an accident where the claimant was rendered paraplegic. The claimant brought a claim for damages relating to a premises which were said to be unsafe. The claim was pleaded at in excess of £2 million.

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C v X

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Representing a claimant in a complicated brain injury claim where liability was in issue and a fundamental dishonesty was raised on causation.

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D v X

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Representing the insurers of a care home being sued in the High Court for breach of duty leading to long-Covid. This was the first known case to go through the court system at the time it was brought. This has been made the subject of a GLO.

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E v X

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Representing the insurer in a personal injury claim brought by a claimant who induced an arc explosion (and thereby sustained serious injury). The claim focused upon the respective duties of the employer and the employee and ultimately dealt with the often thorny issue of author of their own misfortune. Johnathan was successful at trial and on appeal ultimately the case went before the Court of Appeal.

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F v X

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Representing a member of the Metropolitan Special Escort Group who was seriously injured on operational duties whilst escorting a member of the Royal Family.

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G v X

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Representing a protected beneficiary in a disputed multi-million pound liability road traffic collision which examines all aspect of personal injury litigation from liability, causation and quantification (the major aspects being care and accommodation provision for a brain damaged claimant).

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H v X

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Representing an ex-serviceman who was seriously injured in an incident where he was restrained and seriously injured by security staff. Following a lengthy trial on liability the claimant was successful in establishing liability despite a fierce battle on liability.

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I v X

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Representing the defendant in a multi-million pound claim brought by the estate of a man who died whilst attending a licenced establishment.

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J v X

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Representing a claimant in a multi-million-pound claim resulting from a fall from height resulting in life changing spinal injuries. The employer was prosecuted by the HSE and fined significantly. Despite this liability remained in issue as did causation until shortly before trial.

## Civil Fraud

Johnathan is regularly instructed in claims which have an element of civil fraud ranging from fundamental dishonesty to recovery actions for fraud. Johnathan was successful in an FD where he persuaded the court to make an FD finding against a 15-year old girl (*Hogarth v. Marston's Plc* [2021] 3 WLUK 229).

## Sport Litigation

Johnathan was engaged to represent a Premiership rugby international star player who was forced to retire early due to injury he received in his career.

Over the years Johnathan has been engaged by UK Athletics and UK Cycling to defend claims brought against them relating to injuries occasioned during sporting activities. Johnathan represented UK Athletics in a claim brought against them by Olympic triple jumper Nathan Douglas following an injury he sustained in warm weather training which precluded him from participation in the Olympics in London.

Johnathan is regularly instructed by claimants who are injured in various sporting events.

## Professional Negligence

Johnathan represents individuals in claims resulting from professional negligence ranging from clinical negligence or negligence by solicitors and others. Recent work includes representing a claimant in a £5 million King Bench Division claim resulting from alleged clinical negligence relating to cancer treatment.

## Costs

Johnathan is regularly instructed in costs arguments. These relate to the attribution of costs between defendants. In addition, he deals regularly with wasted costs applications under CPR Part 44 and has had significant recent success with raising wasted costs against solicitors for their conduct of litigation. Johnathan also advises on the tactical aspects of cost recovery including those where there is an element of fraud.

## Education

- CPE: College of Law, Chester
- BVC: Inns of Court School of Law, London

## Memberships

- PIBA
- APIL

## Notable Cases

- Price v. Marston's Plc [2024] (Mr Justice Griffiths).
- Burger v. JD Wetherspoon Plc [2024] – pending appeal (Mr Justice Martin Spencer).
- Holden v. (1) Optimum Technical Services Limited (2) S P Power Systems Limited [2023] EWHC 1870 (KB) (Mr Justice Freedman).
- Kasey Hogarth v. Marston's Plc [2021] 3 WLUK 229
- The Bosworth Water Trust v. SSR and Others [2018] EWHC 444 (Mrs Justice Whipple).
- C v. WH [2015] EWHC 2687 (QB)
- Everett & Anor v. Comojo (UK) Ltd (t/a Metropolitan) [2011] 4 All ER
- Edwards-Tubb v. JD Wetherspoon [2011] EWCA Civ 36 (significant on Westlaw)

## Accreditation Logos

