

## David McNaughtan

**Year called:** 2003  
**Email:** david.mcnaughtan@compasschambers.com  
**Qualifications:** Practised as a Barrister and Solicitor in the High Court in Fiji (1994-1996)  
LL.B (Hons)(Aberdeen) (1989)  
Dip.LP(Glasgow) (1990)



## Practice

David is experienced in a wide range of civil litigation. Prior to coming to the Bar, he was a solicitor for 8 years. He also spent 2 years in Fiji as a Senior Legal Officer with the Director of Public Prosecutions there. His principal fields of practice include:-

- Personal Injury
- Professional and Clinical Negligence

David specialises in reparation cases and has represented pursuers and defenders (insurers and local authorities) in a wide variety of actions in both the Court of Session and Sheriff Courts. In his personal injury practice, he deals with cases involving all aspects of personal injury law, including employers' liability, occupiers' liability, road traffic accidents, industrial disease, and product liability.

David has experience of high value cases acting as junior counsel. He has been involved in quantification and settlement of a number of high value claims, where the settlement figure has been in excess of £1 million.

In the professional negligence field, David has acted in cases involving allegations of negligence by solicitors. He also has experience of clinical negligence cases, including birth trauma, allegations of negligence involving GPs, and drug trials where problems have arisen.

## Representative cases

## Reparation

Bell v North Ayrshire Council [2007] CSOH 12 - personal injury action - relevancy of pleadings under Occupiers' Liability (Scotland) Act 1960.

Wallace Brown v Glasgow City Council [2007] CSOH 33 - accident at work in a country park - cases pled under common law,

Workplace (Health, Safety and Welfare) Regulations 1992, Manual Handling Operations Regulations 1992, and the Occupiers Liability (Scotland) Act 1960 - question raised as to whether the pursuer's workplace was part of an agricultural undertaking.

Kevin O'Neill v Dowding & Mills [2007] CSOH 170 - Motion of issues. Discussion of complexities in light of application of 6th edition Ogden Tables. Robertson v Smith 2000 SLT 1012, Reid v BP Grangemouth 8 May 2001, and Slessor v Vetco Gray UK Ltd and Others 2007 CSOH 59 considered.

Kerry Ramage v Scottish African Safari Park Ltd [2008] CSOH 68 - Motion for issues. Child allegedly contracting e-coli during visit to safari park. Cases pled under common law and Control of Substances Hazardous to Health Regulations 1999.

Billy McGhee v Diageo PLC [2008] CSOH 74 - Proof on contributory negligence and quantum. Serious ankle injury and psychiatric injury. Pursuer seeking future wage loss on basis of 6th edition Ogden Tables.

Rodney McLellan v Dundee City Council [2009] CSOH 9 - Proof on liability, contributory negligence and causation. Finger amputated in lawnmower at work. Alleged breaches of Provision and Use of Work Equipment Regulations 1998 and Management of Health and Safety at Work Regulations 1999.

Anthony Brookes v First Aberdeen Limited [2010] CSOH 16 - Personal injuries proof. RTA: "non-collision": scooter rider and bus travelling in opposite directions. Scooter rider losing control of scooter and sustaining knee injury. Court finding that was not the result of the way in which bus was driven. Court finding no link between initial knee injury and subsequent Complex Regional Pain Syndrome in pursuer's foot.

Stephen Garbett v Ryan Blaikie Lord McEwan, 17 May 2011 - Motion for issues. Defenders opposing issues on ground of complexity arising from pension loss calculations. Issues allowed.

Colin Syme v East Lothian Council Haddington Sheriff Court, 14 November 2011 - Debate in personal injuries action. Consideration of Occupiers Liability (Scotland) Act 1960, together with the questions of (i) whether local authority were occupiers of private footpath; and (ii) what, if any, duties of inspection incumbent upon owners of private paths.

Smith v Sabre Insurance Co. Ltd. [2012] CSOH 14. Defenders' plea of res judicata in respect of credit hire charges claimed on behalf of pursuer/Accident Exchange Limited. Previous action for personal injuries had been raised in Stirling Sheriff Court in respect of the same road traffic accident. It was settled on tender and acceptance in sum of £4550. Pursuer then raised further action in Court of Session for around £30,000 of credit hire charges. Lord Bannatyne upholding plea of res judicata.



Vaickuviene v J. Sainsbury plc [2012] CSOH 69. Fatal claim. Deceased was employed by defenders. He was murdered at work by a fellow employee, following a number of incidents of racist abuse. Case pled under Protection from Harassment Act 1997. Defenders argued that they could not be vicariously liable for the criminal act of their employee. Lady Clark of Calton allowing the case to proceed to proof before answer.

## Professional Liability

William McEleney v Dr.Kamal Ohri & others [2007] CSOH 203A - Medical Negligence. Failure to diagnose cauda equina syndrome. Defenders admitted liability. Proof on causation and quantum. Neurosurgical evidence led from Mr. Robin A. Johnston and Mr. Robert Macfarlane.

KT v Lothian NHS Board [2009] CSOH 132 - Medical negligence proof. Cerebral palsy case. Proof on liability and causation. Pursuer pleading cases against obstetrician and anaesthetist. Discussion of res ipsa loquitur in medical negligence cases.

## Professional Memberships

Barrister and solicitor of the High Court of Fiji

## Publications

Road Traffic Accidents and the Consumer Credit Act 1974, 2000 Scottish Law Gazette 162

When is a Liability not a Liability? 2003 SLT (News) 113

The Imponderables Strike Back! 2008 (84) Green's Reparation Bulletin 1

## What The Directories Say

### Chambers UK 2020 - Ranked in Personal Injury Category

Has an expansive practice and is proficient in matters relating to occupiers' liability, road traffic accidents and industrial disease. He is able to handle cases involving foreign jurisdictions. He has recent experience acting for pursuers in claims involving defective hip implants under the Consumer Protection Act 1987. "He is very good with calculations in high-value cases."

### Legal 500 UK Bar 2020 - Ranked in category of Personal Injury, Medical Negligence and Professional Negligence

"Very capable and robust in negotiation, while his attention to detail in complex clinical negligence cases is exceptional"

## **Chambers UK 2019 - Ranked in Personal Injury Category**

"He works extremely hard, is very diligent and is a good communicator"

## **Chambers UK 2018 - Ranked in Personal Injury Category**

"Super-efficient, always of a high calibre and always very good in a team. He'll get the work done and get to the heart of the matter." "An advocate who is highly organised and very up to date with the changes in the law. He really is at the top of his game."

## **Chambers UK 2017 - Ranked in Personal Injury Category**

Has an expansive practice and is proficient in matters relating to occupiers' liability, road traffic accidents and industrial disease. He attracts praise for his organisation and attention to detail. "He is extremely hard-working and really feels the pulse of his cases. He is very friendly and empathic to his clients but is not afraid to be straight with them when required."