

Material contribution in fact... Roadmap

Working through the three causation tests

THREE TESTS FOR CAUSATION

But-for

Universal default. Often defeats the pursuer where multiple cumulative causes produce an indivisible outcome.

Decision stage

Pursuer recovers (full)

MCIF

Indivisible outcome + material contribution proved on BoP + science cannot quantify degree.

Apportioned / defender-favourable exit

MCTR (mesothelioma)

Fairchild rule + Compensation Act 2006 s.3. Will not be extended (Kerr v Midlothian [2024] CSOH 112).

START

Causation contested

STAGE 1

But-for test satisfied?

But for the breach, would the injury have occurred?

Orthodox first question — most cases end here.

YES

OUTCOME

Standard causation — full recovery

No need to invoke material contribution.

NO

STAGE 2

Is this a mesothelioma case?

Special MCTR rule applies — see Fairchild and s.3.

Will not extend beyond mesothelioma — Kerr [2024] CSOH 112.

YES

OUTCOME — MCTR

Material increase in risk = full recovery

Compensation Act 2006, s.3 underwrites against any contributing tortfeasor (Fairchild).

NO

STAGE 3

Is the outcome divisible?

Severity scales with exposure / dose? (Stuart-Smith LJ in Holmes)
Disease: asbestosis · NIHL · HAVS. Trauma: graded harms.

YES

EXIT — HOLTBY APPORTIONMENT

Material contribution + apportionment

Recover the share attributable to the breach.
Holtby.

NO (indivisible)

STAGE 4

Are the MCIF criteria met?

- (i) Indivisible outcome ✓ (just established)
- (ii) Wrongful cause materially contributed (BoP)
- (iii) Science cannot quantify the contribution
- (+) Cumulative — not alternative — causes

Holmes [2024] KB 521; [2023] EWCA Civ 1377 · Wardlaw 1956 SC (HL) 26

ANY NO

EXIT — CAUSATION FAILS

Back to but-for

If the criteria are not all met — most obviously where causes operate alternatively, or evidence shows only a 'risk factor' (Holmes) — the pursuer must satisfy but-for, or fails.

ALL YES

OUTCOME — MCIF ENGAGED

Full recovery — no apportionment

Material contribution in fact (more than de minimis) to an indivisible outcome produced by cumulative causes, where science cannot quantify the share — full recovery on Bonnington / Buccleuch principles.

Duke of Buccleuch v Cowan (1866) 5 M 214 · Wakelin v LSWR (1886) 12 App Cas 41 · Wardlaw v Bonnington 1956 SC (HL) 26 · Holmes v Poeton [2024] KB 521.

Checklist

MCIF across disease, trauma, chemical exposure, infection and nuisance

- **Plead the right test.**

In any contested-causation case, plead but-for and MCIF in the alternative. Plead MCTR only if the case is mesothelioma. After *Kerr v Midlothian* and *Rehman*, MCTR by analogy is closed.

- **Establish indivisibility carefully.**

MCIF cannot be engaged unless the outcome is indivisible. Cite the Stuart-Smith LJ definition from *Holmes*. The whole MCIF case rests on this threshold — pin it down at proof.

- **Distinguish wrongful from background exposure.**

The *Rehman* trap. Show on the balance of probabilities that the relevant exposure was attributable to the defender's breach, not the general environmental background. Applies in chemical, infectious-disease and trauma cases alike.

- **Brief experts on the right question.**

Material contribution in fact, not whether something is a "risk factor". The *Holmes* lesson is that a risk factor is not enough. A report addressed only to risk-factor language will leave you short of the threshold.

- **Watch the *Holmes* evidence point.**

Mr *Holmes* lost not on doctrine but on the medical evidence. Cumulative contribution must be proved on the balance of probabilities; the doctrine alone will not carry you home.

- **Keep MCIF and MCTR rigorously apart.**

MCIF (the *Wardlaw* line) is contribution to the injury in fact. MCTR (*Fairchild*) is contribution to risk and is mesothelioma-only. Conflating them is the route to losing in *Rehman* territory.

- **Mind the divisible/indivisible line for quantum.**

Divisible outcome → apportionment under *Holtby*, *Allen*, *Carder*; you recover the share attributable to the breach.
Indivisible outcome → full recovery on MCIF. The line affects valuation and settlement strategy, not just liability.