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Thomas Herbert

Year of Call: 2014

Telephone: 0115 947 2581

Overview

Tom is recognised as a leading practitioner in clinical negligence, inquests & inquiries, personal injury and commercial litigation.

He is described by the legal directories as “*an all-round excellent counsel*” who “*never fails to impress*” and is praised for his “*mastery of the brief*” and “*sensitivity to the needs and interests of his instructing solicitors and clients*”. He is “*approachable, considered, articulate and intelligent*” and “*often able to think of imaginative solutions*”. As such, he is regularly instructed in complex and high-value matters, including those attracting media interest, and is a particularly experienced appeal advocate considering his level of call.

The breadth of Tom’s practice is apparent from his instructions on applications, at trial and on appeal in matters ranging from personal injury and disease to commercial disputes and costs. He was appointed to the Attorney General’s Regional B Panel in 2023.

Recent and ongoing cases of note include:

- Junior to [Patrick Limb KC](#) representing two well-known airlines in ongoing High Court litigation concerning alleged ‘aerotoxicity’ and, as sole counsel, representing an airline in two related claims arising from alleged ‘fume events’.
- Advice to and representation of a local authority at a three-week Article 2 inquest arising from the murder of a young girl by her mother.
- With [Philip Turton](#), advice to and representation of the deceased’s maternal family at a four-week Article 2 inquest into the death of a 13-year-old girl by hanging, including a recusal application made at the pre-inquest review stage.
- Defending a range of proceedings arising from the breakdown of a high-profile relationship, including a breach of contract claim in the County Court, a claim in the torts of deceit & conspiracy in the King’s Bench Division of the High Court and insolvency proceedings.
- Advice to and representation of the deceased’s family in relation to coronial and civil proceedings arising from a failure to prescribe anticoagulant medication. The civil claim settled for £400,000 and received court approval on the basis of Tom’s advice.
- Successfully resisting an appeal against a District Judge’s decision to grant the Defendants’ very late application for their own medical evidence in a noise-induced hearing loss case.
- Representation of the respondent in a costs appeal in the Family Division of the High Court: *C v S (Private Children Proceedings: Costs)* [2022] 2 FCR 780.

- Advice and representation at an appeal concerning CPR Part 11 and common law waiver.

Tom read Chemistry at the University of York and graduated with a Master's degree before studying at Nottingham Law School, where he achieved a distinction in his Graduate Diploma in Law and was graded 'Outstanding' on the Bar Professional Training Course, obtaining the highest mark in his year in Civil Litigation.

As a result of his scientific academic background, from which his "*clients and instructing solicitors benefit*", he has a rigorous and analytical approach. He enjoys dealing with abstract or technical points of law and is particularly well-placed to analyse chemical, pharmaceutical and statistical evidence, and converse with experts in those fields.

Tom frequently delivers lectures and seminars to solicitors. Recent topics include vicarious liability, expert evidence and causation in novel chemical exposure cases. He is also a member of the editorial committee for the [Ropewalk Blogs](#), and regularly contributes to publications such as the Journal of Personal Injury Law.

Away from the Bar, Tom's interests include current affairs, good food and fine wine. He is a school governor at his former primary school in Nottinghamshire.

Expertise

Inquests

Tom has a busy inquests practice and an excellent reputation in this area. This is recognised in the Legal 500, where he is listed as a tier 1 "leading junior".

He routinely acts for families and other interested persons at pre-inquest review hearings and at inquests, both where proceedings (civil or criminal) are likely to follow and where matters are unlikely to be taken any further. His experience includes inquests involving deaths in or related to primary and secondary care, cases where the deceased was known to local authority social care departments, deaths of vulnerable adults in care homes, deaths of those detained under mental health legislation, accidents at work, road traffic accidents and deaths in custody.

The inquests at which Tom appears are frequently dominated by complex questions of fact and medical causation, raising issues such as neglect and the applicability of Article 2. He is accordingly experienced in making legal submissions and questioning lay and expert witnesses in such matters.

Examples of notable work include:

- Advice and representation (with [Philip Turton](#)) at a four-week Article 2 inquest into the death of a 13-year-old girl by hanging. This included a recusal application made at the pre-inquest review stage. The inquest attracted intense media interest. To read an example article, please [click here](#).
- Representation of a local authority at a three-week Article 2 inquest into the death of a 19-month-old girl who was murdered by her mother. The matter attracted national media attention. To read an example article, please [click here](#).
- Representation of the CQC at a five-day jury and Article 2 inquest following a care home death. The matter received local media attention. To read an example article, please [click here](#).
- Representation of the deceased's family at a five-day jury inquest concerning the deaths of two young children who contracted a rare strain of *E.coli* poisoning. There were questions as to the adequacy of the primary and secondary care both children received. The matter received national media attention. To read an example article, please [click here](#). Civil claims were compromised following the inquest.
- Representation of the deceased's family at a jury inquest into the death of a woman who died when a medical oxygen cylinder, which was being used by paramedics to treat her, ignited. The expert engineering evidence was complex, focusing on particle impact and adiabatic compression. The matter attracted national media attention. To read an example article, please [click here](#). A civil claim is ongoing.
- Representation of the deceased's family at an inquest into the death of a three-day-old baby following her delivery in a poor condition due, in part, to undiagnosed maternal pre-eclampsia. The matter received local media attention. To read an example article, please [click here](#). A civil claim is ongoing.
- Representation of the deceased's family at a six-day jury inquest into the death of a woman found hanged on a secure psychiatric ward. The civil claim was compromised for a six-figure sum.
- Representation of an insurer at an inquest into a death arising from a road traffic collision. The deceased had left his vehicle, under the influence of drugs, and was in the carriageway at the time of the collision with the insured driver's vehicle.
- Representation of the deceased's family at a one-day inquest following a death in hospital. The coroner issued a [Prevention of Future Deaths report](#) due to concerns over the lack of timely review by a senior doctor.
- Representation of the deceased's family at a four-day jury inquest following a workplace accident. A civil claim in the High Court is ongoing.

Clinical Negligence

Tom is recognised as a “leading junior” in clinical negligence work by the Legal 500 and as an “up and coming” junior by Chambers & Partners.

He advises in writing and in conference, drafts pleadings and acts across a broad spectrum of medical work, including dental negligence.

Many of his cases follow inquest proceedings. He has experience of high-value claims, complex causation arguments, issues of informed consent, secondary victim claims and Fatal Accidents Act claims. He generally acts in cases worth up to £1 million.

Tom’s scientific background means that he is adept at conducting conferences with experts. He has also questioned numerous experts through his coronial practice, from GPs to consultant paediatric nephrologists.

Examples of notable work include:

- Advice and representation of the deceased’s family in proceedings arising from a failure to prescribe anticoagulant medication. The claim settled for £400,000 and received court approval on the basis of Tom’s advice.
- Representation of the deceased’s family at a mediation of a claim arising from alleged delays to identify and treat post-operative deterioration whereby the deceased developed lower-limb paralysis. The claim raised difficult questions of causation and quantum and was ultimately settled.
- Advice in a claim involving a patient who was mistakenly told that he had terminal, inoperable cancer only to be told subsequently that his cancer was treatable such that he was likely to, and did, make a full recovery.
- Drafting pleadings in relation to an alleged failure to obtain informed consent for a spinal fusion operation.
- Drafting pleadings and advising in conference with a consultant haematologist and cardiologist in a claim arising from an alleged failure to act upon a high eosinophil count. The claim ultimately settled.
- Representation of the deceased’s family in an ongoing claim against two GPs and a nurse arising from an undiagnosed appendicitis. The deceased was the driving force behind the family business, giving rise to a substantial financial dependency claim.
- Advice on quantum in a claim concerning a failure to examine and seek an orthopaedic review of a surgical wound, leading to an above-the-knee amputation.
- Advice in relation to a claim concerning a young child who died from complications of chicken pox. Claims were advanced on the behalf of the estate and on behalf of the child’s mother, as a secondary victim, for psychiatric injury caused by witnessing his deterioration.
- Representation of the Claimant at trial in a case where there was a stark conflict between the Claimant’s account and the contemporaneous notes. Both experts also gave oral evidence as to causation.
- Advice on quantum in a claim arising from a failure to diagnose and treat renal failure, necessitating a kidney transplant that would have been avoided with prompt diagnosis.

Disease

Industrial disease work forms a significant part of Tom’s personal injury practice, where he is ranked as a “leading junior” by the Legal 500. He has particular experience of noise-induced hearing loss claims and regularly acts for both Claimants and Defendants, dealing with medical causation, breach of duty and limitation. He is also familiar with claims relating to occupational asthma, asbestos-related disease, occupational stress, COSHH and work-related upper limb disorders.

Claims arising from exposure to chemicals are a particular interest, given Tom’s background, as are technical factual and legal arguments on causation.

Examples of notable work include:

- Junior to [Patrick Limb KC](#) representing two well-known airlines in ongoing High Court litigation concerning alleged 'aerotoxicity' (said to be caused by exposure to chemicals such as organophosphates) and, as sole counsel, representing an airline in two related claims arising from alleged 'fume events' (that is, alleged exposure to airline fuel).
- Successfully resisting an appeal in a noise-induced hearing loss case against a District Judge's decision, on the Claimant's expert's request for directions under CPR 35.14, to require the expert to answer the Defendant's Part 35 questions.
- Successfully resisting an appeal against a District Judge's decision to grant the Defendants' very late application for their own medical evidence in a noise-induced hearing loss case.
- Instructed on an appeal concerning the scope and extent of adverse inferences in noise-induced hearing loss claims. Tom successfully represented the Defendant at trial. The Claimant's appeal was withdrawn shortly before the hearing.
- Representation of the Defendant at trial in a vibration exposure claim where the Claimant alleged that he had developed bilateral carpal tunnel syndrome. The claim was unusual in that the issue was diagnosis of carpal tunnel syndrome, on which the experts disagreed. The matter settled at trial with both experts in attendance.

Personal Injury

Tom deals with personal injury cases across all tracks, including advice on procedure and tactics.

He is ranked as a "leading junior" by the Legal 500 and is regularly instructed by Claimants and Defendants across the full range of personal injury disputes, including employers' liability, public liability, occupiers' liability, defective premises, product liability and Highways Act claims. Accidents in schools are a particular interest.

He has a busy trial practice and regularly attends interim hearings. He is sought after for his concise and robust drafting, particularly of Defences.

Examples of notable work include:

- Representation of the Defendant at a two-day trial in an employers' liability matter. Following cross examination of the Claimant, Tom called no evidence and made submissions that there was no case to answer. The claim was dismissed.
- Advice to and representation of the Claimant in a liability-admitted matter arising from a road traffic accident following which the Claimant developed severe neurological and psychiatric symptoms against a background of pre-existing idiopathic conditions. There are currently experts in five disciplines raising difficult questions of causation.
- Advising the Defendant on limitation, liability and quantum in a claim for sexual abuse brought in the High Court against the estate of a deceased doctor.
- Advising on causation and quantum in a psychiatric injury claim where a child witnessed a road traffic accident in which her mother was struck by a car at a pedestrian crossing.
- Advice in a complex brain injury case with eight expert witnesses across five disciplines, where difficult questions of capacity and the extent of accident-related injury arose.
- Representation of the Claimant in an ongoing appeal against the Defendant's successful application to strike out a claim arising from an accident on a cruise ship on the basis that it was wrongly issued in the County Court as opposed to the Mercantile Court. The appeal raises issues as to the appropriate management of cases issued in the incorrect court and the operation of the QOCS regime.

Commercial Dispute Resolution

Tom is listed as a "rising star" in commercial litigation by the Legal 500 and has broad experience across a range of commercial matters, from simple debt collection to complex contractual disputes. He represents clients in court and in all forms of Alternative Dispute Resolution.

He has experience of disputes arising from breach of contract, claims involving wrongful interference with goods,

construction disputes, misrepresentation and restitution claims. He also has experience of insolvency matters and disputes between companies and directors.

Examples of notable work include:

- Defending a range of proceedings arising from the breakdown of a high-profile relationship, including a breach of contract claim in the County Court, a claim in the torts of deceit & conspiracy in the King's Bench Division of the High Court and insolvency proceedings.
- Advice and representation at an appeal concerning CPR Part 11 and common law waiver in the context of a partnership dispute.
- Representation on an unusual application under sections 125 and 1096 of the Companies Act 2006 arising from a suspected attempt to defraud the Claimant, whereby she was appointed as the director and shareholder of a company without her knowledge or consent.
- Advice and successful representation at an appeal against the refusal of relief from sanctions. The matter – a contractual dispute – subsequently settled at court on the day of trial following several days of negotiations between counsel.
- Representation of the Defendant to a claim by a contractor for alleged loss of income and aggravated damages for harassment. The claim for harassment was struck out on the Defendant's application. The contractual claim is ongoing.
- Representation of the judgment creditor in enforcement proceedings in the High Court.
- Advice and representation in a multi-track commercial dispute where the key issue was the proper construction of a guarantee clause.
- Advice and representation at a round-table meeting in a construction dispute. The matter ultimately settled on terms favourable to Tom's client.
- Advice in relation to a dispute arising from the shipment of cargo to China. Evidential issues arose in relation to proving breach of contract and legal questions arose as to mitigation of loss.
- Successful representation of the Defendant company in a claim for the repayment of alleged loans made by its former director. The claim was dismissed on the basis that the director had not acted in accordance with the company's constitution and could not avail himself of section 40 of the Companies Act 2006.

Costs & Litigation Funding

As pupil to Andrew Hogan, Tom assisted with legal research in a number of notable decisions such as *Jones v Spire Healthcare Ltd* [2016] 3 Costs LO 487 (assignment of conditional fee agreements) and *Essar Oilfields Services Ltd v Norscot Rig Management PVT Ltd* [2017] Bus LR 227 (costs awards in arbitration proceedings).

In his own right, he regularly attends CCMCs, for both Claimants and Defendants, as well as other costs applications and hearings such as applications for non-party costs orders.

Examples of notable work include:

- Representation of the respondent in a costs appeal in the Family Division of the High Court arising out of long-running and complex private children proceedings: *C v S (Private Children Proceedings: Costs)* [2022] 2 FCR 780.
- Representation at an appeal concerning a costs order made against a litigant in person in a small claims matter arising from a contractual dispute.
- Instructed on an appeal concerning the recoverability of an ATE insurance premium in clinical negligence proceedings. The matter was stayed pending a related Court of Appeal decision and was ultimately compromised.
- Representation of the Defendant on an application concerning the fixed recoverable costs of an application for pre-action disclosure where the substantive application was compromised prior to the hearing. Tom's article on the decision was published in the May 2018 edition of the *Personal Injury Law Journal*. To read the article, please [click here](#).

Insurance

Tom often advises insurers in respect of coverage and indemnity issues, predominantly in a personal injury and industrial disease context, though instructions have covered areas as diverse as criminal prosecutions and employment law.

He has also advised insurers at a more strategic level as to their approach to underwriting certain classes of work.

Examples of notable work include:

- Advising an event management company in relation to an insurance coverage dispute arising out of its operation of a national sporting event, both in relation to an intimated personal injury claim and the staging of the event in the future.
- Advising an insurance company in relation to a claim under the Third Parties (Rights Against Insurers) Act 2010 in relation to an ATE insurance policy which the underwriters purported to avoid for material misrepresentation and non-disclosure.
- Strategic advices for an insurance company in relation to coverage of Japanese Knotweed claims and PPI claims.
- Advising policyholders in relation to business interruption insurance claims for losses arising from the COVID-19 pandemic.

Employment

Tom has acted in a range of employment cases, including claims for unfair dismissal and discrimination, and has advised on the drafting of employment contracts (including post-termination restraint of trade clauses).

He has a particular interest in discrimination claims in the County Court and has provided strategic advice to insurers in this area.

Examples of notable work include:

- Representation of the Claimant at a three-day tribunal for unfair dismissal and discrimination on the basis of pregnancy. The discrimination claim succeeded.
- Provision of high-level strategic and tactical advice to (amongst others) a major supermarket chain in relation to discrimination and mask use as a result of the COVID-19 pandemic.

Property & Real Estate

As a result of his time working as a paralegal in a firm of family law solicitors prior to pupillage, Tom has a special interest in claims relating to beneficial interests in property (constructive trusts and proprietary estoppel).

He has appeared at the final hearings of numerous claims under the Trusts of Land and Appointment of Trustees Act 1996 and is experienced at drafting pleadings and advising on such matters. He also has experience in the mediation of domestic trusts of land disputes.

Public Sector & Not for Profit

Tom has a niche interest in special educational needs and disability law, which is informed by – and informs – his activities as a school governor. He has appeared in the First-tier Tribunal and has also drafted submissions on costs in relation to special educational needs proceedings.

Notable Cases

- ***C v S (Private Children Proceedings: Costs)* [2022] 2 FCR 780.** A costs appeal to Arbutnot J arising out of long-running and complex private children proceedings.
- ***Inquest touching the death of AP.*** A four-week Article 2 inquest into the death of a 13-year-old girl by hanging. The matter attracted intense media interest. To read an example article, please [click here](#)
- ***Inquest touching the death of LH.*** A jury inquest into the death of 67-year-old grandmother who died when a medical oxygen cylinder ignited, setting fire to her home. The matter attracted national media attention. To read an example article, please [click here](#).
- ***Inquest touching the death of SL & FL.*** A jury inquest into the deaths of two very young children from haemolytic uraemic syndrome caused by a rare strain of *E. coli*. The matter attracted national media attention. To read an example article, please [click here](#).
- ***Inquest touching the death of CV.*** An Article 2 jury inquest into the death of a care home resident who was subject to deprivation of liberty safeguards. The matter attracted local media attention. To read an example article, please [click here](#).
- ***Inquest touching the death of GC.*** A three-week Article 2 inquest into the death of a 19-month-old girl who was murdered by her mother. The matter attracted national media attention. To read an example article, please [click here](#).

Appointments

- Attorney General's Regional B Panel of Junior Counsel to the Crown
- Direct Access
- Chair of the Civil Court Users Committee, Nottinghamshire Law Society

Professional Memberships

- Personal Injuries Bar Association
- Nottinghamshire Medico-Legal Society
- Action Against Medical Accidents (AvMA)
- Royal Society of Chemistry

Qualifications

- BPTC (Outstanding), Nottingham Law School
- GDL (Distinction), Nottingham Law School
- MChem (Hons) Chemistry, University of York

Recommendations

"Thomas never fails to impress at inquest with his mastery of the brief and his sensitivity to the needs and interests of his instructing solicitors and clients."

- Legal 500 2023 – Inquests and Inquiries

"Thomas has a reasoned approach when dealing with complex clinical negligence claims. He is able to clearly identify key strengths and weaknesses and articulate his opinion confidently and clearly with clients."

- Legal 500 2023 – Clinical Negligence

"Thomas pays good attention to detail and is always very responsive and thorough. He is often able to think of imaginative solutions."

- Legal 500 2023 – Personal Injury

"Thomas is incredibly robust, knowledgeable, and approachable. He is always available to talk matters through and provide advice and expertise. His work is always of a very high standard and his advocacy skills are unparalleled."

- Legal 500 2023 – Commercial Litigation – Rising Star

"Thomas Herbert is a junior barrister with a strong clinical negligence practice. He regularly acts for claimants in cases involving serious injury or fatality resulting from negligent diagnosis and failure to treat. Clients and instructing solicitors benefit from his scientific academic background." "Thomas is approachable, considered, articulate and intelligent; an all-round excellent counsel."

- Chambers and Partners 2023 – Clinical Negligence – Up and Coming

"Very good with the client in what can only be described as tragic circumstances."

- Legal 500 2022 – Inquests and Inquiries

"A conscientious and diligent counsel whose work is always first-class. Eloquent and effective pleadings, and straightforward advice which always gets to the heart of the matter."

- Legal 500 2022 – Clinical Negligence - Rising Star

"Thomas has always given each matter his full consideration and provided accurate, concise recommendations whilst remaining approachable to both of my clients during very difficult times for them."

- Legal 500 2022 – Personal Injury – Rising Star

"Provides very well-considered, accurate, and succinct advice."

- Legal 500 2021 – Inquests and Inquiries – Rising Star

"He offers very practical and tactical advice in addition to being a great legal technician."

- Legal 500 2021 – Commercial Litigation – Rising Star

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