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Thomas Herbert

Year of Call: 2014
Telephone: 0115 947 2581

Overview

Tom is widely recognised as a leading practitioner in clinical negligence, inquests & inquiries, industrial disease and commercial litigation.

He is described by the legal directories as "***an all-round excellent counsel***" whose advocacy "***is nothing shy of brilliant***". He is praised for his "***incredible ability to pick up things at pace, assimilate large volumes of information and deliver clear and concise advice***" and his "***talent for assimilating large volumes of data, especially medical and scientific data, and delivering detailed, well-executed submissions***". He has "***an exceptional intellect***" and is "***often able to think of imaginative solutions***". As such, he is regularly instructed in complex and high-value matters, often unled against silks, and is a particularly experienced appeal advocate considering his level of call. In October 2023, he was featured as one of the "***new leading names … across the UK Bar***" according to Chambers UK.

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

Recent notable cases include:

- Junior to Patrick Limb KC representing the claimant in ***Holmes v Poeton Holdings Ltd*** [2024] KB 521 (Underhill, Phillips and Stuart-Smith LJJ), which resolved the longstanding confusion as to whether the material contribution approach to causation applies in cases of indivisible injury (Parkinson's disease allegedly caused by occupational exposure to trichloroethylene).

- Junior to Patrick Limb KC representing easyJet and Virgin Atlantic in ongoing High Court litigation concerning alleged 'aerotoxicity' (***Westgate v British Airways plc***, King's Bench Division, Yip J) and, as sole counsel, representing easyJet in two related claims arising from alleged 'fume events'.

- Defending a range of proceedings arising from the breakdown of a high-profile relationship, including a breach of contract claim in the County Court (***Ezee Management Ltd v Jacob***, County Court at Wandsworth, DJ Parker), a claim in the torts of deceit & conspiracy in the High Court (***Ezee Management Ltd v Jacob***, King's Bench Division, Tipples J) and insolvency proceedings (***Safe and Sound Storage Ltd v Jacob***, County Court at Central London, DJ Hart).

- Representation of the respondent at an appeal concerning a circuit judge's decision to strike out a claim due to the claimant's obstructive behaviour in the witness box (***Cox v Ministry of Justice***, King's Bench Division, Bright J).

- Drafting costs submissions for the interested party following the Court of Appeal's decision in ***R (Koro) v County Court at Central London*** [2024] EWCA Civ 94 (Baker, Phillips and Stuart-Smith LJJ) and subsequently representing the interested party as defendant to the underlying claim (***Koro v Crown Prosecution Service***, County Court at Central

London, ongoing and subject to appeal).

- 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 (***Briggs v Cronite Alloys Ltd***, County Court at Sheffield, HHJ Ingram).

- Representation of the respondent in a costs appeal in the Family Division of the High Court: ***C v S (Private Children Proceedings: Costs)*** [2023] 2 FLR 128 (Arbuthnot J).

- Advice and representation at an appeal concerning CPR Part 11 and common law waiver (***Ditta v Rafiq***, County Court at Stoke-on-Trent, HHJ Salmon).

- 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 (***Inquest touching the death of GC***, Nottinghamshire Coroner's Court, HM Assistant Coroner Gordon Clow).

- 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 (***Inquest touching the death of AP***, Nottinghamshire Coroner's Court, HM Area Coroner Laurinda Bower).

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, especially causation, and is particularly well-placed to analyse chemical, pharmaceutical or statistical evidence and converse with experts in those fields. In this regard, it is noted that he "***is very adept at dealing with complex issues of causation and excels when cross-examining medical experts***".

Tom frequently delivers lectures and seminars to solicitors. Recent topics include low-level asbestos exposure and material contribution in clinical negligence cases. He is also a member of the editorial committee for the Ropewalk Blogs, and 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.
- Representing the Ministry of Justice in ongoing coronial proceedings arising from the death of a prisoner by hanging.
- 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. A civil claim was subsequently compromised.
- 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 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 timeous review by a senior doctor.
- Representation of the deceased's family at a two-week Article 2 jury inquest into the death of a woman following her admission to a secure psychiatric ward and the development of acute hyponatremia caused by psychogenic polydipsia. The coroner issued a Prevention of Future Deaths report due to concerns over the trust's policies and the lack of any guidance, local or national, on the management of psychogenic polydipsia. The matter attracted national media attention. To read an example article, please click here.

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 the Claimant in ***Holmes v Poeton Holdings Ltd*** [2023] EWCA Civ 1377, which resolved the longstanding confusion as to whether the material contribution approach to causation applies in cases of indivisible injury (Parkinson's disease allegedly caused by occupational exposure to trichloroethylene).
- Junior to Patrick Limb KC representing easyJet and Virgin Atlantic in ongoing High Court litigation concerning alleged 'aerotoxicity' (said to be caused by exposure to chemicals such as organophosphates) and, as sole counsel, representing easyJet 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.
- Successful representation of the Defendant at a two-day hand-arm vibration syndrome trial that turned on expert evidence as to whether the Claimant displayed the clinical features of Reynaud's phenomenon.

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:

- Advising and representing the Defendant in High Court proceedings against the Probation Service for physical and psychiatric injuries sustained by the Claimant as a result of he criminal acts of a prisoner released on licence.
- 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 "leading junior" in commercial litigation by the Legal 500 and as an "up and coming" junior by Chambers UK. He 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.
- Advice and representation in a multi-track commercial dispute where the key issue was the proper construction of a guarantee clause.
- 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.
- Successful representation of an estate agent in relation to alleged misrepresentations concerning the sale of a property at auction.

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.
- Defending numerous claims against local authorities or private service providers in relation to alleged discrimination in the provision of services.
- Advising and representing the Ministry of Justice in relation to discrimination claims by prisoners.

Notable Cases

- ***Holmes v Poeton Holdings Ltd*** [2023] EWCA Civ 1377. Currently the leading case as to the applicability of the material contribution approach to cases of indivisible injury.
- ***C v S (Private Children Proceedings: Costs)*** **[2023] 2 FLR 128.** A costs appeal to Arbuthnot 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 deaths 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.
- ***Inquest touching the death of MW.*** A two-week Article 2 jury inquest into the death of a woman following her admission to a secure psychiatric ward and the development of acute hyponatremia caused by psychogenic polydipsia. 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
- Professional Negligence 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 is personable and provides great advice. He performs well in court."

- The Legal 500 2026

"His advocacy is nothing shy of brilliant, with him remaining composed, prepared and direct to all issues in hand. He is always able to be ahead of the curve with cases, with an attentive and thorough approach."

- The Legal 500 2026

'Tom is tenacious, meticulous and unrivaled. His technical knowledge and advocacy combined prove incredibly powerful. He is helpful, thorough and really quite brilliant."

- The Legal 500 2026

"An exceptional barrister. He has a remarkable capacity to process and distill complex medical information into clear, understandable terms, ensuring that everyone involved can fully grasp the issues at hand."

- The Legal 500 2026

"Thomas is very personable and his approach is well-received by clients."

- Chambers UK 2025

"Thomas is an excellent draftsman and an unrivalled advocate. He's tenacious, gifted and approachable, and thinks outside the box."

- Chambers UK 2025

"Thomas cuts straight to the point and clearly outlines the strongest (and perhaps more importantly) the weakest aspects of a case. He is very adept at dealing with complex issues of causation and excels when cross-examining medical experts."

- The Legal 500 2025

"Tom has an exceptional intellect; he always has a thorough understanding of the legal position in any case and can advance detailed legal arguments on behalf of his clients. He is a detailed advocate and is always across the finer complex details of a case. He is an advocate that can be trusted."

- The Legal 500 2025

"Thomas is an excellent advocate, with a talent for assimilating large volumes of data, especially medical and scientific data, and delivering detailed, well-executed submissions. His advocacy is nothing shy of brilliant, with him remaining composed, prepared and direct to all issues in hand."

- The Legal 500 2025

"Thomas has an incredible ability to pick up things at pace, assimilate large volumes of information and deliver clear and concise advice."

- The Legal 500 2024

"Thomas is exceptionally bright and very knowledgeable about the inquest process. He has a very professional and compassionate manner with clients."

- The Legal 500 2024

'Thomas is excellent at advocacy and advises thoroughly in the client's best interests. He has phenomenal attention to detail with drafting particulars, and you always know you are in a safe pair of hands."

- The Legal 500 2024

"Thomas is very knowledgeable across a wide spectrum of disease types. He provides clear and logical advice."

- The Legal 500 2024

"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."

- The Legal 500 2023

"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."

- The Legal 500 2023

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

- The Legal 500 2023

"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."

- The Legal 500 2023

"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

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

- The Legal 500 2022

"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."

- The Legal 500 2022

"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."

- The Legal 500 2022

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

- The Legal 500 2021

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

- The Legal 500 2021

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