

Duncan McNair

Year of Call: 2003
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Overview

Duncan McNair practices in personal injury and clinical negligence, enjoying a substantial advisory and court practice.

Duncan acts for both claimants and defendants in all elements of personal injury law including serious road traffic accidents, occupiers' liability, employers' liability, military injury claims and high value claims. He often advises in complex disputes requiring extensive schedules and involving challenging causation issues.

Duncan has particular expertise in employers' liability, specifically cases involving accidents at work, where his background outside law and his degree in physics provide a particular insight and skill when dealing with technical expert evidence.

Taking a practical and unflinching approach to risk assessments in marginal CFA cases, Duncan is not afraid to run cases where prospects are less than guaranteed. He is regarded as an accomplished and fearless advocate by both professional and lay clients.

He also has experience advising and representing parties at Inquests and the Criminal Injuries Compensation Scheme.

Recommendations

"He has a strong grasp of the relevant issues and is good with both clients and experts."
"His work is second to none really and his attention to detail is brilliant."
"Duncan consistently provides robust, thorough and commercially minded advice."
"Duncan's advocacy is outstanding and his paperwork and schedules are superb."
"He has a very sharp mind and is personable with clients. On the papers, he is very thorough, quick and highly intellectual."
Chambers UK 2027/Clinical Negligence Western Bar

Duncan McNair is an experienced barrister who acts for claimants and defendants in a wide range of personal injury claims. He is particularly experienced in the handling of employers' liability cases involving accidents at work and claims arising from RTAs.

"Duncan's attention to detail is brilliant. His way with clients is excellent and puts them at ease."
"Duncan provides very clear and precise advocacy."
"Duncan is totally fearless about running difficult cases. He is persistent and not afraid to fight."
Chambers UK 2027/Personal Injury Western Bar

'Duncan gives good quality, thorough, sensible advice. He is interested in and passionate about his cases. He has very good attention to detail, while also not getting 'bogged down' with unnecessary arguments.'
Legal 500 2027/Clinical Negligence/ Western Circuit/ Leading Juniors

'Responsive to queries. Proactive rather than reactive. Quick to return papers, often picking up the phone or sending an email to confirm his views. Very reasonably priced for his experience. Thorough in his preparation and personable with clients. An excellent advocate with a forensic eye for detail.'
Legal 500 2027/Personal Injury/ Western Circuit/ Leading Juniors

"Duncan has done an amazing job."
"Duncan reads the judge very well and has a measured approach. He doesn't just have one style of advocacy. He is adaptable to different circumstances."
"Duncan has provided very good advice and he has been an incredible support."
"Duncan is an extremely reliable and efficient counsel. He is great with numbers and great with clients."
"Duncan is an attention-to-details man and has proved invaluable in the preparation of complex schedules of financial loss."
Chambers UK 2026/Personal Injury Western Bar

Duncan McNair has 'an excellent analytical ability' and an established reputation for handling surgical negligence cases. Duncan is a brilliant trial advocate who builds good rapport with clients.'
Legal 500 2026/Clinical Negligence/ Western Circuit/ Leading Juniors

Duncan McNair is ranked in the **Legal 500 2026** for Personal Injury/ Western Circuit/ Leading Juniors

"Duncan is always prompt at providing detailed and reasoned advice. Clients find him approachable and knowledgeable."
"Duncan is quick as lightning; his turnaround times are the fastest I have ever seen from any barrister. He is exceptional in court and takes no prisoners."
Chambers UK 2025/Personal Injury Western Bar

'Duncan is exceptionally bright and very commercially minded. He can immediately identify a problem and knows how to fix it. His advice is always straight to the point and very robust.'
'A highly experienced and skillful advocate', Duncan McNair continues to excel in the field, with consistently impressive work on catastrophic cases, particularly those caused by road traffic and work accidents.
Legal 500 2025/Personal Injury/ Western Circuit/ Leading Juniors

'Duncan has a forensic eye for detail, a quick turnaround of paperwork and is an excellent advocate.'
Duncan McNair is another key name of note, focusing exclusively on surgical negligence and is regarded for his 'thorough and insightful paperwork'.
Legal 500 2025/Clinical Negligence/ Western Circuit/ Leading Juniors

Strengths: "Duncan is an extremely helpful barrister with strong advocacy skills."
Chambers UK 2024/Personal Injury Western Bar

'Duncan provides robust advice and sees the nuances in every case - he is very good on his feet and excellent with clients too.'
Legal 500 2024/Personal Injury/ Western Circuit/ Leading Juniors

Strengths: "He is pragmatic, extremely commercial, yet knows when to fight. He is excellent."
"Duncan is a very enthusiastic, strong and reliable advocate."
Chambers UK 2023/Personal Injury/Western Bar

Duncan McNair is acknowledged in the **Legal 500 2023**/Personal injury/Western edition as a Leading Junior.

Strengths: "Sees the issues very quickly and is very robust and no-nonsense. He gets excellent results."
Chambers UK 2022/Personal Injury/Western Bar

Duncan McNair is acknowledged in the **Legal 500 2022**/Personal injury/Western edition as a Leading Junior.

Strengths: "He is very incisive and able to cut through the most problematic of cases."
Chambers UK 2021/Personal Injury/Western Bar

'Duncan is technically skilled, swift-thinking and straight talking; being able to identify key issues at an early stage and apply

practical solutions to proactively progress difficult cases.'
"Duncan McNair has particular expertise in employers' liability, specifically cases involving accidents at work."
Legal 500 2021/Personal injury – Leading juniors

Strengths: "He is very approachable, excellent with clients and gives very sensitive and realistic advice." "He is extremely proactive, always available and turns papers around very quickly."
Chambers UK 2020/Personal Injury/Western Bar

`Develops great rapport with clients'
Legal 500 2020/Personal injury and clinical negligence – Leading juniors

"His advocacy and cross-examination skills are very good, as is his paperwork." "He's very personable, turns paperwork around quickly and puts clients at ease."
Chambers UK 2019/Personal Injury/Western Bar

`A first-class cross examiner.'
Legal 500 2018/19/Personal injury and clinical negligence – Leading juniors

`He has skills beyond his years of call.'
Legal 500 2017/Personal injury and clinical negligence – Leading juniors

'He provides excellent paperwork, advice and exceptional advocacy skills'
Legal 500 2016/Personal injury and clinical negligence – Leading juniors

'Always efficient and helpful'
Legal 500 2015/Personal injury and clinical negligence – Leading juniors

'Unflinching in the face of difficult issues.'
'A talented advocate'
Legal 500 2014/Personal Injury and Clinical Negligence.

Client Testimonials
A Court of Appeal judge commented to Duncan McNair in a recent application for permission to appeal in a personal injury case: *"(The client) has been lucky to have you as his advocate"*.

Expertise

Personal Injury

Duncan acts for both claimants and defendants in all elements of personal injury law including serious road traffic accidents, occupiers' liability, employers' liability and high value claims. He often advises in complex disputes requiring extensive schedules and involving challenging causation issues.

Duncan has particular expertise in employers' liability, specifically cases involving accidents at work, where his background outside law and his degree in physics provide a particular insight and skill when dealing with technical expert evidence.

Duncan frequently appears and advises in cases about injuries sustained abroad, both from accidents and disease. These include road traffic accidents and accidents at hotels or other premises, often with very serious consequences. Disease claims include both generic food poisoning and cases with identified pathogens such as cryptosporidium or norovirus, often involving significant numbers of claimants. Many cases fall under the Package Travel etc. Regulations 1992; others proceed in the UK against domestic or foreign defendants.

Taking a practical and unflinching approach to risk assessments in marginal CFA cases, Duncan is not afraid to run cases where prospects are less than guaranteed.

He also has experience advising and representing parties at Inquests and the Criminal Injuries Compensation Scheme.

Cases from the last 5 years include:

- **D v M:** Quantum assessment. Claimant pedestrian run over by 4x4 and suffered pelvic fracture; liability admitted. Should have made a reasonable recovery but instead was left with severe disability arising out of a chronic pain condition. Lost her Navy career and pension, was left with little residual earnings capacity. Case gave rise to complex issues of causation and quantification of Navy earnings and pension. **Settled for £1,322,000 less CRU and interims.**
- **W v T:** acted for claimant who stumbled over poorly-compacted backfill where a utility company had dug a trench. It denied liability but Duncan pleaded the surprising but effective application of the CDM regulations. Claimant suffered injury to her leg leading to amputation. Defendant raised complex medical causation issues as claimant suffered diabetes and had a serious fracture to the same leg one year previously; alleged that index accident did not cause loss of leg. Both liability and causation issues settled in claimant's favour for **lump sum of £500,000.**
- **B v B:** Acted for claimant, pillion passenger who suffered serious injuries in a motorcycle collision where the driver, her fiancé, died in collision with a bus. Indemnity issues regarding driver's failure to notify insurer of modifications. Claim ran against fiancé's estate, the bus company and fiancé's insurer under Article 75. Liability and indemnity issues eventually resolved in claimant's favour. Injuries included moderate head injury and significant pelvic fracture, though the claimant returned to work and independent living. **Settled for £150,000.**
- **G v a motor insurer:** acted for a passenger who claimed damages for loss of the chance of a career in the armed forces. This required complex calculations as to the value and chance of different factual scenarios, which Duncan resolved by developing an IT-based solution.
  Settled for £135,000.
- Significant quantum issues included lost earnings: claimant was in the process of setting up a business at the time of the accident and we had to reconstruct his potential income from limited evidence. The claimant's PTSD complicated matters because he was prone to entering a dissociative state in moments of stress, which required careful and sensitive handling.
  The case settled after a JSM for **£105,000 plus CRU of approximately £20,000.**
- **S v L:** Acted for young claimant in claim for traumatic brain injury suffered in road traffic accident. Ongoing complaints of severe fatigue, concentration problems and personality change; claimant was by now in university, managing her course, but requiring substantial extra effort. Experts for both sides (neuropsychologists and neuropsychiatrists) disagreed as to whether brain injury was moderate, with cognitive changes arising from physical damage, or mild, with cognitive changes

arising out of post-concussion syndrome and psychiatric factors. If the latter, the experts disagreed about the likely prognosis. **Claim settled for £95,000.**

- **S v G:** Acted for middle-aged claimant in claim arising out of moderate road traffic accident with moderate physical injuries. Claimant suffered devastating post-traumatic stress disorder which arose after the accident, but the content of his disorder related to sexual abuse he suffered as a small child. There were substantial causation issues: our expert said that, but for the accident, the claimant would not have developed the psychiatric symptoms, regardless of their subject matter; defendant's expert said that the claimant would have developed them at some time in any event.
- **B & M v D:** Acted for defendant's insurer in fatal motorcycle accident in which defendant suffered paraplegia and his pillion passenger died when a vehicle ran over her. The driver and passenger of the other vehicle sued the defendant, claiming psychiatric injury but not physical injury. Advised on the law on causation, taking account of the criteria for recovery of psychiatric injury as a primary victim on the basis that the claimant was an 'unwilling participant' who had unintentionally caused another person's death. The driver and passenger were in very different legal situations because the driver was the unwitting cause of death but the passenger, probably, was not. Both claimants had pre-Jackson funding arrangements and the insurer made an economic settlement.
- **Stephens v Braham:** Duncan's client was a motorcyclist who suffered severe injuries when overtaking a car turning right at a junction. Two independent witnesses gave evidence that the car had been signalling right for some time before the turn. Client's Part 36 offer was 50/50 and other side's was 75/25 against. At a hard-fought three-day liability trial the judge found 50/50, matching Duncan's Part 36 offer.
- **Tucknott v Bridgend CBC:** acted for a cyclist who fell as a result of a defective bridge surface on a cycle path. He sustained a serious femoral fracture with life-changing consequences. The defendant fought the case on complex arguments as to the status of the path: it argued the path was not a public highway at the accident locus, because the order creating it designated a different route. After cross examination of the defendant's surveyor the judge accepted Duncan's arguments and found the path to be on the public highway. Judgment on liability for claimant.

Inquests

Duncan has expertise in employers' liability and particularly cases involving complex accidents at work. His degree in physics provides him with particular insight and skill in dealing with technical expert evidence. Duncan's practice also includes many high-value claims, including complex disputes with extensive schedules and challenging causation issues. Duncan also undertakes fast track cases.

Duncan acts for both claimants and defendants in all elements of personal injury law including serious road traffic accidents, occupiers' liability claim and employers' liability. He deals with industrial disease, particularly noise-induced hearing loss, and claims against the Ministry of Defence. Before joining the Bar, Duncan had a successful career as a recruitment consultant. That experience provides him with useful and practical experience in the commercial aspects of litigation.

Solicitors will always be concerned about counsel's threshold for accepting CFA cases. Duncan takes a practical and unflinching approach to risk assessment in marginal claims, and is not afraid to run cases where prospects are less than guaranteed. He usually wins them.

Duncan also represents parties at Inquests and the Criminal Injuries Compensation Scheme.

Cases of note include:

- G v a motor insurer: acted for a passenger who claimed damages for loss of the chance of a career in the armed forces. This required complex calculations as to the value and chance of different factual scenarios, which Duncan resolved by developing an IT-based solution. Settled for £135,000.(2013)
- Stephens v Braham: Duncan's client was a motorcyclist who suffered severe injuries when overtaking a car turning right at a junction. Two independent witnesses gave evidence that the car had been signalling right for some time before the turn. Client's Part 36 offer was 50/50 and other side's was 75/25 against. At a hard-fought three-day liability trial the judge

found 50/50, matching Duncan's Part 36 offer. (2013)

- Tucknott v Bridgend CBC: acted for a cyclist who fell as a result of a defective bridge surface on a cycle path. He sustained a serious femoral fracture with life-changing consequences. The defendant fought the case on complex arguments as to the status of the path: it argued the path was not a public highway at the accident locus, because the order creating it designated a different route. After cross-examination of the defendant's surveyor the judge accepted Duncan's arguments and found the path to be on the public highway. Judgment on liability for claimant. (2013)
- W v T: acted for claimant who stumbled over poorly-compacted backfill where a utility company had dug a trench. It denied liability but Duncan pleaded the surprising but effective application of the CDM regulations. Claimant suffered injury to her leg leading to amputation. Defendant raised complex medical causation issues as claimant suffered diabetes and had a serious fracture to the same leg one year previously; alleged that index accident did not cause loss of leg. Both liability and causation issues settled in claimant's favour for lump sum of £500,000. (2012).

Client Testimonials

A Court of Appeal judge commented to Duncan McNair in a recent application for permission to appeal in a personal injury case: "(The client) has been lucky to have you as his advocate".

Clinical Negligence

Duncan has a burgeoning clinical negligence practice involving issues of limitation and knowledge, consent and negligently performed surgery, including in particular cosmetic surgery. His advisory work is very highly regarded and he is one of the few practitioners in this field to have direct experience of clinical negligence litigation all the way through to judgment.

Recent cases:

- C v an NHS trust [2014]. Duncan acted for a claimant who experienced severe complications (including a lifelong colostomy) when a laparoscopic abdominal procedure went wrong. The defendant raised vigorous disputes on breach of duty and causation, but settled for 85% of full valuation a matter of days before trial in the High Court.
- E v Dr A [2012]: Duncan acted for the claimant in a six-day trial on the issue of the true extent of informed consent in elective surgery. His opponent was a notable silk with extensive experience of clinical negligence. Duncan succeeded and the defendant failed in his application for leave to appeal.

Before joining the Bar Duncan had a successful career as a recruitment consultant, which provides him with useful and practical experience in the commercial aspects of litigation and expectation management.

Costs
Duncan has extensive experience in civil costs, both pre and post Jackson reforms. He has conducted numerous detailed assessments in the SCCO, the county courts, and since Jackson has also conducted numerous costs and case management conferences. He advises and represents clients on high valued bills and Form Hs, both on CFA cases and on private client cases.
Duncan has a broad litigation practice, which enables him to apply his experience of running a case to technical costs points.

Recent cases:

- Advising a road traffic insurer on whether Article 75 of the MIB agreement allowed it to avoid paying costs for which a claimant was insured
- Advising and representing an after-the-event insurer joined to proceedings for the purpose of a non-party costs order with regard to conduct in negotiations
- Advising an insurer on the merits and procedure in a case where the litigant obtained a costs order against a bankrupt but insured individual where the bankrupt's insured repudiated indemnity
- Broadhurst v Tan: instructed by defendant in circuit judge appeal on an important point of principle under the new fast-

track fixed costs regime. Should the court oust the fixed costs regime when the claimant gets an award of indemnity costs? Or does an award of indemnity costs make no difference, as the costs are fixed? Resolved in favour of defendant

- Kandasamy v Sohel: circuit judge appeal on pre-action protocol in low-value personal injury claims. Where a claimant is entitled to withdraw from the protocol because the defendant declined to make an interim payment, but the claimant serves notice out of time, is the notice still valid.