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THE BALANCING ACT



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MOCK TRIAL

**Louise Bedford,
Caroline Elson &
Alexandra Estcourt**

Kennedys

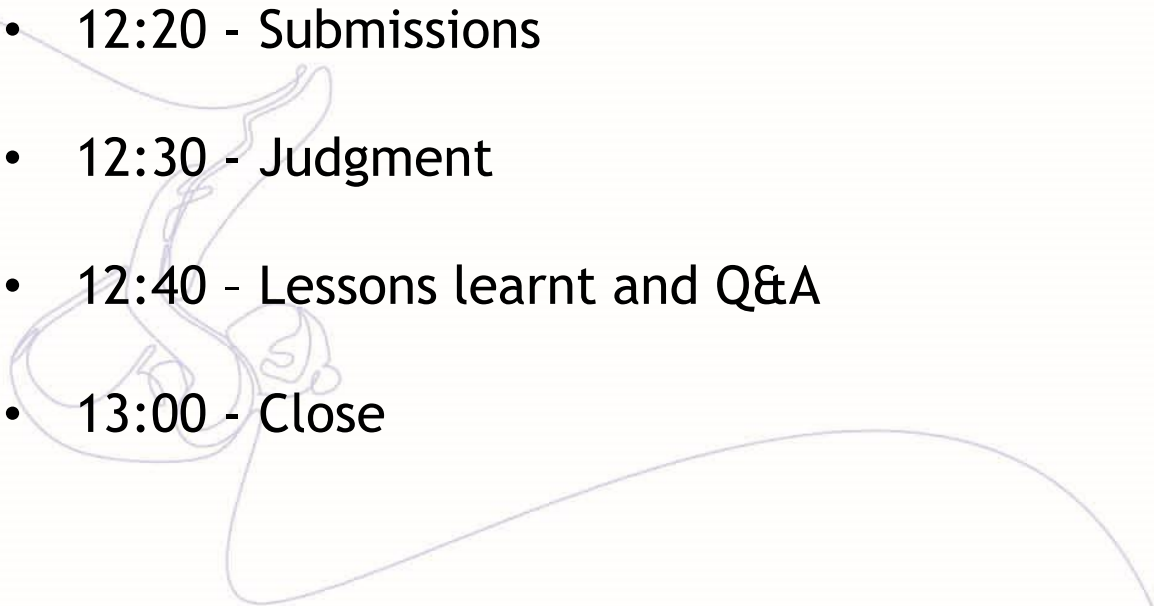
**Corin Furness, Bryan
Patterson-Whitaker &
Catherine Souter**



P
PARKLANE
PLOWDEN
CHAMBERS



Agenda

- 11:30 - Welcome and scene setting
 - 11:40 - The trial
 - 12:20 - Submissions
 - 12:30 - Judgment
 - 12:40 - Lessons learnt and Q&A
 - 13:00 - Close
- 
- A large, faint line-art illustration of a hand holding a pair of scissors, similar to the one in the top right, but much larger and positioned in the background, partially overlapping the agenda list.

Case list

June Buchanan - Claimant

Caroline Elson, Kennedys

**Samantha Wilson - Council's Green
Spaces Manager**

Alexandra Estcourt, Kennedys

Counsel - Claimant

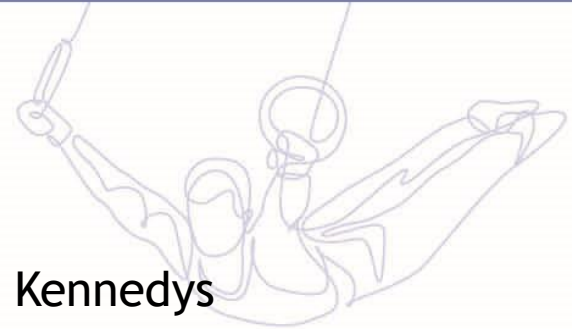
Bryan Patterson-Whittaker, Parklane
Plowden

Counsel - Defendant

Corin Furness, Parklane Plowden

Judge

Catherine Souter, Parklane Plowden

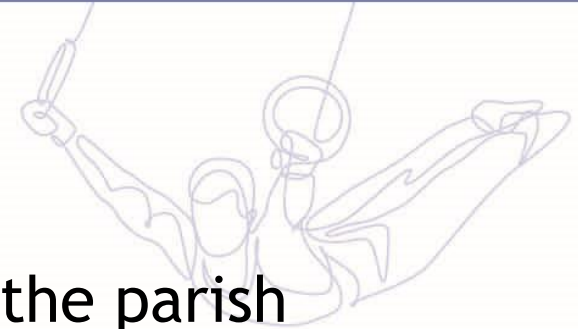




Scene setting

Claim - accident circumstances:

- Accident on 1 October 2019
- Claimant walking her dog on Council's playing fields, stepping into a hole 8" wide by 6" deep
- Sustained injury to right ankle
- Claim brought under *Section 2 of the Occupiers' Liability Act 1957*.



Defence

- Defendant council owned the land but the parish council occupied and exercised control over it.
- There was a public right of way over the grassed area - *McGeown* defence relied upon.
- Defendant had a reactive system of maintenance and repair.
- No record of any complaints.
- The grass was cut by an independent sub-contracted grass cutter - no complaints received from the contractor.

Medical evidence

Report of Bruce Banner, Consultant Orthopaedic Surgeon dated 8 August 2020

- Sprain to the right ankle
- Physio recommended
- Symptoms for 18 months to two years.

Claim value

General damages
£2,000

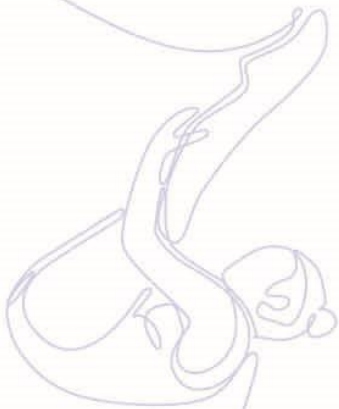
Special damages

Travel expenses - £5.40

Loss of earnings - £960

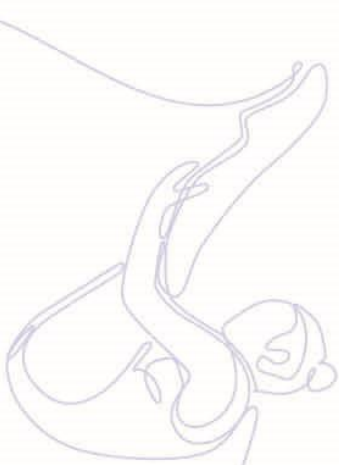


The trial





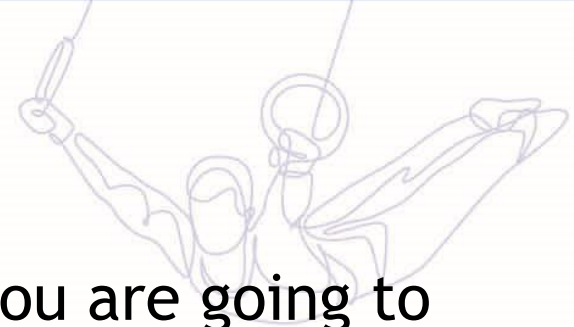
Lessons learnt & Q&A





Systems and practices

- Create a watertight document trail.
- Emphasise the importance to all involved at every stage of the process.
- Make sure that accurate records are kept of all issues/reports/visits.
- If there are any complaints, make sure these are documented.
- Complete site inspection reports.
- If there are work orders and/or repairs, make sure these are evidenced.
- Take photographs of alleged issues.
- Take photographs of repairs.



Documents

- Documents in support are essential if you are going to win.
- Must be able to prove a system was in place AND that it was implemented.
- Duty is to disclose ALL relevant documents.
- This is an ONGOING duty.
- If you are not sure something is relevant, disclose it to your solicitor.
- Discovering something is missing in the witness box is too late.
- Saying something exists in the witness box is too late.



Specific documents

- **WHAT** does the document show?
- **WHO** inputs the content of the document?
- **HOW** is the document generated?
- **WHAT** happens once the document has been created/submitted?
- **WHERE** does the document fit in the overall picture?
- **WHAT** does the document prove?
- Ensure your witnesses are capable/comfortable to discuss all of the above.



Witness statements

- Encourage your witness to play an active part in drafting their statement.
- Ensure they are in the witness' own words.
- Do not use over complicated terminology or legalese.
- Ensure that your witness statements are consistent with each other.
- Ensure that all references to documents are accurate.
- Address any missing documents.
- Explain any omissions/inconsistencies - it is better to confront these head on.



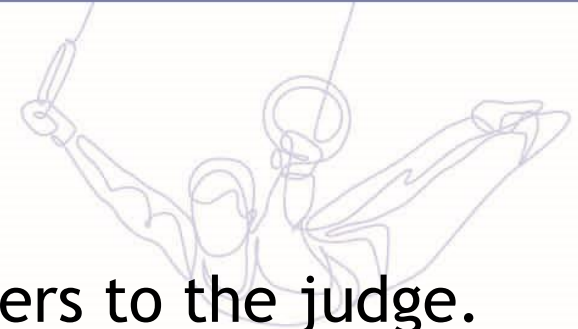
Photographs

- **WHEN** were they taken?
- **WHO** were they taken by?
- **WHAT** are they intending to show?
- **WHY** have they been included?
- Photos **MUST** be able to be put into context.
- If appropriate, **MARK** and/or **ANNOTATE** the photographs.
- Photos **MUST** be decipherable - ensure there are decent copies available.
- If the trial is remote, make sure the photos can be viewed.



Pre-trial preparation

- Provide all witnesses with copies of all statements and a trial bundle.
- Pencil in time to enable them to prepare for the trial.
- Arrange a conference with counsel if possible.
- Have a discussion with all witnesses about the trial process, their role in that process and the issues likely to arise from their statements.
- Highlight missing documents and establish why they are missing.
- Discuss any inconsistencies in their account/controversial aspects of their evidence to ensure this does not take them by surprise.



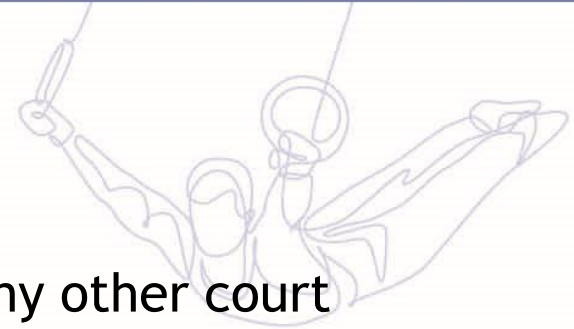
General points for witnesses

- Speak loudly and slowly directing answers to the judge.
- Be confident of their expertise/abilities - they are the experts in their field.
- Sit up straight - body language is important.
- Be professional, polite and courteous at all times.
- Do not take any criticism personally.
- Do not be too partisan, make any necessary concessions.
- Develop a reputation for being decent, honest and helpful.



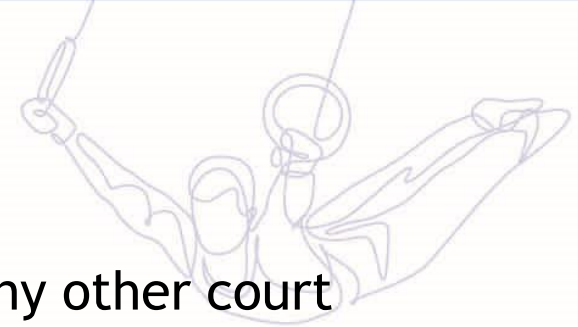
The trial

- **SPEAK** loudly and slowly directing answers to the judge.
- **LISTEN** to the questions - if unsure, ask for the question to be rephrased.
- **ANSWER** the questions in as much detail as possible.
- **EXPLAIN** their answers - whether they agree or disagree, explain why.
- **HELP** with any technical detail/abbreviations.
- **REFER** to documents wherever possible to support an answer.
- **SAY** if they cannot remember or do not know something.
- **STOP SPEAKING** once the answer is complete - do not go off on a tangent.



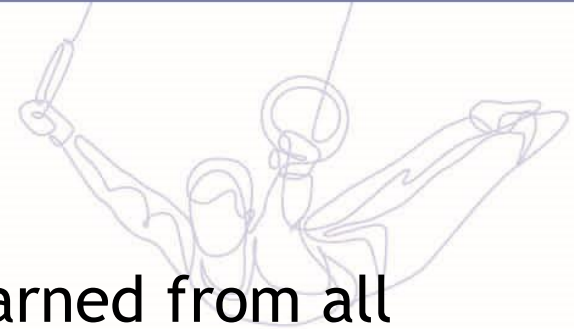
Virtual reality

- **FORMALITY** - treat the hearing as you would any other court hearing.
- **WIFI** - ensure your WiFi capability is good enough to conduct the hearing.
- **LOCATION** - make sure you are somewhere quiet and won't be disturbed.
- **WITNESSES** should (ideally) be on their own when giving evidence.
- **APPEARANCES** still count!
- **BUNDLE** - make sure you have a copy of the bundle in front of you.
- **MUTE** yourself when you are not giving evidence.
- **KEEP IN TOUCH** with your barrister via Whatsapp or similar.
- **DO NOT** have your phone with you when giving evidence.



Virtual insanity

- **FORMALITY** - treat the hearing as you would any other court hearing.
- **DON'T PANIC** if you cannot connect/lose connection.
- **DON'T TALK OVER EACH OTHER** - a lesson for witnesses and barristers.
- **TIME LAGS** happen.
- **REPITITION** - ask for a question to be repeated if you miss it.
- **ASK** for clarification if you are unsure what is being asked.
- **CHECK** that you are looking at the right document if one is referred to.
- **REMEMBER YOUR CAMERA IS ON AT ALL TIME!**



Post-mortem

- Whether win or lose, lessons can be learned from all trials.
- It is good practice to have a de-brief with all witnesses after the trial.
- Ask for their perspective. Did they feel they could have been supported more? Would they have done anything differently?
- Do your systems need reviewing?
- Do your staff need additional training?
- Seek advice from your solicitor - they are there to help.

Kennedys key contacts



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Parklane Plowden key contacts



Corin Furness

Barrister

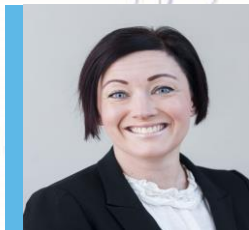
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Bryan Patterson-Whitaker

Barrister

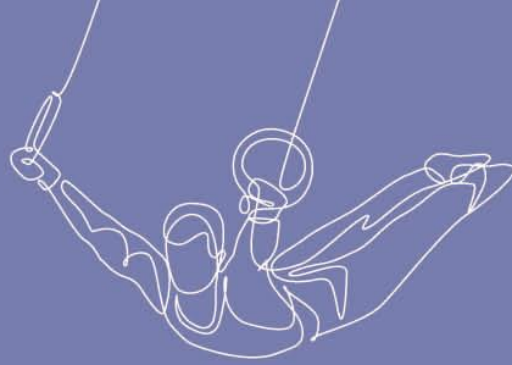
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