CLINICAL THINKING

Solicitor updates and insights on clinical negligence and personal injury topics

temple legal protection

Welcome to the latest edition of our ‘Clinical Thinking’. In this issue we start with an overview of the importance of risk assessments in personal injury and clinical negligence claims. This is followed by an in-depth analysis of the Court of Appeal’s decision in Singh & Ors v Ingram [2025]. Elsewhere we report on ‘My Whole Self’, Mental Health First Aid England’s campaign for workplace culture change and share why Temple is supporting it. Enjoy reading our views; if you’d like to share yours, please get in touch with our team – contact details are on page 10.

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Risk Assessment: An ATE Insurer's Perspective

By Bipin Regmi, Senior Underwriter

This article provides an overview of the importance of risk assessments in personal injury and clinical negligence claims, from the perspective of an ATE insurance provider. It outlines how such assessments inform both the viability of a claim and the insurer's decision to provide cover, and examines what solicitors should consider when presenting cases for ATE insurance.

According to NHS Resolution's annual report of 2023/2024, the NHS's payout amounted to £2.8 billion in compensation and associated costs, the NHS received 13,784 new clinical negligence claims and only 52% of the clinical claims resulted in payment of damages.

A solicitor's risk assessment is an important part of any personal injury and clinical negligence claim. From an ATE insurer's perspective, risk assessments are vital in order to assess whether to provide legal insurance cover, whilst also managing potential liabilities.

Some assessments are straightforward in a personal injury claim, but in clinical negligence claims, this can be more complex. An effective risk assessment can early on eliminate claims that do not have good prospects whilst, at the same time, identify what will need early investigation in order to ascertain the prospects of success.

Assessments of risk are particularly important to solicitors as most are instructed under a Conditional Fee Agreement (CFA) in personal injury and clinical negligence claims. If the claim is not successful, the solicitors will not get paid; therefore, a robust risk assessment is of upmost importance at the outset of the claim. It is also equally important when presenting the claim to your legal insurer for ATE cover.

The process of risk assessment involves identifying factual and legal implications of the claim, including the financial implications and mitigation of risk of costly claims.

Importance of effective risk assessments

Effective risk assessments help identify the weaknesses and form a plan of action to run a personal injury or clinical negligence claim successfully. By identifying and understanding these risks, solicitors can plan and identify measures to run the claim effectively. This will identify what to do, how to counter any pitfalls early on, and how to tackle those which may make a difference to the success of the claim.

Although solicitors may not enjoy doing a risk assessment after seeking instructions from a prospective client, if the process is done properly it will save a lot of time and cost and provide effective guidance about how to run the case to a successful conclusion.

An effective risk assessment will help investigating the claim, working out potential problems and what needs to be done. Importantly this process can help eliminate a claim which does not have good prospects early on.

Key considerations in a risk assessment

- Factual/legal considerations
- Breach and Causation
- Limitation
- Consent issues
- Claimant's witness evidence
- Identification of key lay witnesses
- Medical evidence - what experts evidence will be necessary and from which disciplines
- Likely defence
- Legal costs including disbursements of the claimant and the defendant
- Prospects of Success
- Considerations of key documents including medical notes and records

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What will an ATE insurer look for in a risk assessment?

A solicitor should understand that an insurer is there to provide a service and, as such, a solicitor's and insurer's objectives are different. If the claim is unsuccessful, there are disadvantages to both - the solicitors, who are usually under a CFA, will not recover any costs - and the insurer will have to pay the costs of the claim, which can often be six figures.

Your insurer is there to assist you rather than be difficult. Insurers need to protect their interests and will need to investigate the claim properly prior to providing cover. An insurer may request a response to various queries and ask for various documents to review and evaluate the claim before providing cover. Here at Temple, we may request further information from our coverholders where a case is outside of our delegated authority scheme.

The following considerations will assist the insurer in their assessment of the claim -

- Assess the factual case with legal elements - including duty of care, breach of duty, causation and loss.
- Test the evidence provided by the claimant with objective evidence such as medical notes and records, accident reports, medical reports (screening reports), inquest notes, internal investigation reports/serious injuries reports etc.
- If you are unsure of the prospects or there is a particular legal or factual issue in a claim, encourage internal review amongst your fee earners.
- If in doubt, seek independent advice from an experienced counsel. Although counsel's advice may not always be necessary, this will assist the insurer in considering the risks of the case and whether to provide cover or not.
- A counsel's positive advice does not always mean cover will be provided – that is decided on case-by-case basis - but it will certainly be helpful.
- Provide as much evidence as possible as this will help the insurer in their decision on whether or not to provide cover.
- Complete a risk assessment form and provide a copy with the claim. If you wish to review your risk assessment process, speak to your ATE insurer who will be happy to assist.

The insurer will consider if the case has good prospects - you will need to convince the insurer of that by providing enough evidence. Simply stating the claim has good prospects of success is unlikely to be satisfactory but a well thought-out summary in respect of those prospects may help persuade the insurer to provide cover.

- If you have concerns about any aspects of a claim you are dealing with, have dealt with a similar claim successfully previously or encountered any problems which you successfully dealt with, do let your insurer know. It is best to be open and honest about the claim and to work in collaboration with your insurer.
- In most clinical negligence claims, initial breach and/or causation expert evidence may be required and it may be difficult for you to provide prospects of success until such evidence is received.
- The insurer is looking for a case summary on why the case is worth investigating; a thoughtful summary on why the claim has reasonable prospects of success and is one worth investigating will always be helpful.
- Most claims have weaknesses, it is therefore important to provide your plan of action to counter the weaknesses.

The above is by no means a comprehensive list.

Summary

A risk assessment is an important part of any personal injury and clinical negligence claim. From a legal insurer's perspective, an effective risk assessment is important to help them provide suitable insurance cover and maintain financial stability.

By identifying the factual/legal aspects of the claim and risks associated with it, providing supportive documentation and a realistic plan of action, a legal insurer will be better equipped to decide on whether to provide cover and to mitigate any potential liabilities.

A comprehensive and proactive approach to a risk assessment is not only beneficial to an insurer but also the solicitor as an important step towards the successful resolution of a claim.

At Temple, we are always happy to use our extensive experience to help our coverholders and partners with their risk assessment process, and to consider your existing process, should you wish us to do so.

Please call Bipin Regmi on 01483 514414 or email bipin.regmi@temple-legal.co.uk with your questions and observations on this topic or to discuss your ATE insurance or disbursement funding requirements.

Retrospective CFAs: guidance from the Court of Appeal

By Bipin Regmi, Senior Underwriter

This case study examines the Court of Appeal's decision in Singh & Ors v Ingram [2025], which considered whether a Conditional Fee Agreement (CFA) could apply to work undertaken before it was signed. The case involved a detailed dispute over the interpretation of CFA terms, the role of implied intent, and the implications for cost recovery in contentious proceedings. It offers valuable insight for solicitors working under CFAs, particularly where retrospective coverage is in question.

In **Singh & Ors v Ingram [2025]**, the Court of Appeal addressed the issue of whether a Conditional Fee Agreement (CFA) entered into by the respondent (the claimant in the original proceedings) and his solicitors had retrospective effect.

Background of the case

The respondent (a liquidator) of a company brought a claim against the appellant with allegations that the appellants had sought (through void dispositions, a false credit note and other illegitimate means) to diminish the assets available to the respondent.

HHJ Hodge KC found against the appellants and subsequently ordered payment of the respondent costs of the proceedings on an indemnity basis. This was because their conduct "both before and during the proceedings, has been so far outside the norm of commercial litigation in general that it is appropriate that the costs should be assessed on the indemnity basis".

The assessment of costs was a highly contentious affair. Numerous issues were raised before Costs Judge Nagalingam ("the Costs Judge"), which were heard over no less than seven separate hearings. The fifth hearing, on 20 September 2021, was taken up with the determination of the question whether the CFA was retrospective. The Costs Judge concluded that the CFA was retrospective.

The appellants appealed the decision on retrospectivity and other aspects. Lavender J, sitting with Costs Judge Rowley as an assessor, upheld the decision of the Costs Judge. The appellants, who were unsuccessful on two occasions, challenged the conclusions by the Costs Judge and the High Court. The retrospectivity issue alone was the subject of this second appeal.

What was the Court of Appeal decision?

1. The Grounds of Appeal in the Court of Appeal were framed in the following terms: The judge was wrong to find that the conditional fee agreement signed between the Claimant and his solicitors on 24th March 2015 was expressly retrospective. The term as to retrospectivity was not express, clear or unambiguous.
2. The judge was wrong to find that the combination of terms contained within the CFA was sufficient to amount to an express term on retrospectivity so as to disapply the presumption that a CFA will not be retrospective.
3. The judge erroneously treated the definition of "the Claim" and use of the word "Claim" in clauses 2 and 4 of the CFA as an express and unambiguous term on retrospectivity, notwithstanding the fact that the definition of "the Claim" could reasonably be interpreted as a pure description of the proceedings. The fact that the term "Claim" was capable of having more than one meaning ought to have led the judge to conclude that it was not an unambiguous term on retrospectivity.
4. The judge failed to take into account (either sufficiently or at all) and failed to give proper weight to the "matrix of fact" which included clear evidence that the signatories to the CFA had no commercial imperative to sign a retrospective CFA.
5. The judge failed to take into account at all or failed to give proper weight to the "matrix of fact" which included clear evidence of the fact that the solicitor had at no time explained (or even mentioned) to their client that the CFA was designed to have retrospective effect (in a clear breach of their regulatory duties). The judge was wrong to dismiss this highly relevant fact.

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The appellants argued that any term as to retrospectivity had to be express. Coulson LJ said that "I can see no reason why, as a matter of general principle, such a term could not be implied into a CFA, provided always that the necessary test for implication has been made out. But since implication does not arise in the present case, I need say no more about it."

Coulson LJ found that the CFA was plainly retrospective and that anyone reading the CFA would have understood that it was retrospective because it covered – without distinction – the work done on the Claim from 13 March 2012 up to the date of the CFA, and all the work to be done on the Claim thereafter.

Coulson LJ stated that there are no rules that the drafting of a CFA had to follow a particular form and that the solicitors work on the claim, from the beginning, was covered by the CFA. Coulson LJ also stated that for a CFA to be retrospective, there is no requirement that the word "retrospective" must be used. Coulson LJ found that the CFA was and was always intended to be retrospective.

Coulson LJ rejected Grounds 1, 2 and 3 of the appeal and stated that "The interpretation of those words is a simple and straightforward matter which gives rise to a perfectly sensible result."

Coulson LJ found that the Costs Judge and Lavender J had regard to the matters and that the CFA gave the respondent a proper degree of certainty about the liability for fees. Coulson LJ further stated that respondent and the solicitors understood that the CFA superseded whatever had happened prior to the agreement and covered all the work done on the claim prior to its signing. Coulson LJ therefore dismissed Ground 4.

In respect of Ground 5 of the appeal, Coulson LJ stated that the appellant did not plead this argument, and that a finding that the solicitors were in breach of their duties was not sought from the costs judge, therefore it was not a finding that he made. Coulson LJ stated that it is wrong to ask the court on second appeal to make contentious finding of fact and declined to do so.

Coulson LJ stated "The appellants cannot avoid the obvious consequences of the CFA simply because – on this assumption, the solicitors did not tell the respondent in express terms that the CFA was retrospective." Coulson LJ therefore rejected Ground 5 of the appeal.

Coulson LJ concluded that "…I consider that, on its proper construction, the CFA was retrospective; the factual matrix and the findings of the Costs Judge only support that conclusion; and there is nothing in the authorities which requires a different decision. If my Lady and my Lord agree, I would dismiss this appeal." Both Baker LJ and Asplin LJ agreed to dismiss the appeal.

Conclusion

In summary, the court found that the CFA was retrospective and that anyone reading the CFA would have understood that it was retrospective. The court also found that for a CFA to be retrospective, there is no requirement that the word "retrospective" must be used. CFAs must comply with section 58-58A of the Courts and Legal Services Act 1990 to be lawful and enforceable. It was expressly confirmed in Birmingham City Council v Forde [2009] that CFAs could be retrospective. It is important to consider that non-complaint CFAs are not enforceable, and an unenforceable CFA means costs may not be recoverable, and law firms are not entitled to fees paid under an unlawful CFA. It is therefore important for law firms to consider drafting of CFAs and/or retrospective CFA as non-compliant CFAs can have costly repercussions.

The Temple Perspective

This decision is important and will be relevant to many solicitors instructed under a CFA and those considering retrospective agreement within their CFAs. This decision shows that a careful consideration shall need to be done whilst considering retrospective CFAs. This decision also highlights the principle that the retrospective effect of a CFA depends on proper construction of the CFA. It may also be beneficial to explain the CFA and a CFAs retrospective effect carefully to clients and keep a record of the same, should challenges occurs in respect of costs upon detailed assessment.

Please call Bipin Regmi on 01483 514414 or email bipin.regmi@temple-legal.co.uk with your questions and observations on this topic or to discuss your ATE insurance or disbursement funding requirements.

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My Whole Self': Mental Health First Aid England's campaign for workplace culture change.

By Lisa Fricker, Head of Solicitor Services & Quality Assurance

This year, Mental Health First Aid (MHFA) England launched a new initiative called 'My Whole Self', which is a campaign for workplace culture change. MHFA England wants employers to create cultures where people feel safe to bring their whole self to work, if they choose. Teams that feel safe and connected work better together, driving improvements in mental health and performance.

MHFA England is warning employers of the risks of deprioritising equity, diversity and inclusion (EDI), cautioning that doing so could impact employee and business health.

New research published by them on 11th March to mark 'My Whole Self Day', reveals almost a third of employees (30%) say people in their organisation sometimes reject others for being different. 1 in 10 employees (9%) said they do not feel their team treat each other with respect.

Declining psychological safety in the workplace

The research was carried out by MHFA England (in partnership with Henley Business School) among 2,000 employees. It also revealed the number of people who feel they can bring their whole self to work has dropped dramatically in the past five years, as EDI initiatives come under threat globally. Companies such as Google, Meta, McDonald's, and Amazon have announced they are scaling back EDI initiatives.

There has been a 25% drop in the number of people who feel they can bring their whole self to work, (66% in 2020, 41% in 2024) risking employee wellbeing and productivity. Of the employees surveyed, around a third agree that not being your whole self at work has an impact on productivity (31%), mental health (34%), and engagement with work (36%), with a consequent knock-on effect on well-being, purpose and performance.

Employees struggle to bring their whole selves to work

Data released for 'My Whole Self Day' 2025 reveals that only half the number of people who think it important to bring their whole self to work feel able to do so. 82% think it important people are able to bring their whole self to work, but only 41% of people feel they can, and only 31% felt their colleagues could do so in practice.

This is particularly true for those with protected characteristics. 54% of black people say not being able to bring their whole self to work impacts productivity and 51% of gay or lesbian people say it impacts their mental health. Only 1 in 4 (25%) of people with mental ill health felt they could bring their whole self to work.

The more energy employees use to hide parts of themselves at work, the less energy they have to focus on work. By deprioritising EDI employers risk increasing this further. This 'brain drain' could result in a significant loss of talent and a decline in productivity.

There is also concern about the disconnect between manager and employer perceptions of psychological safety. MHFA England research shows that, while senior managers are most likely to recognise the importance of being able to bring your whole self to work, they tend to overestimate the extent to which they feel their colleagues can do so.

Understanding psychological safety

This year, MHFA England have worked in partnership with Henley Business School, publishing a new report exploring how psychological safety can influence employee engagement and wellbeing.

- Read the full MHFA England white paper 'The business case for belonging. How psychological safety drives engagement, wellbeing, and performance' here -https://mhfaengland.org/mhfa-centre/research-and-evaluation/the-business-case-for-belonging/

In addition, MHFA England has provided a range of free tools and activities for organisations to use to start changing their workplace culture and empower their employees to bring their whole selves to work.

- You can access the resources needed to get involved here https://mhfaengland.org/my-whole-self/

The Temple Perspective

Here at Temple, we are fully committed to supporting our staff's health and wellbeing, ensuring that equity, diversity and inclusion (EDI) is at the forefront of employee wellbeing. With a dedicated Mental Health & Wellbeing page on our internal website homepage, topical webinars provided by Mental Health in Business (MHiB) yearly and a MHFAider, we provide the support and encouragement we can, to create a culture where staff feel valued and that they can bring their 'Whole Self' to work.

If you would like to know more about this subject please don't hesitate to contact me on 01483 514872 or via email to lisa.fricker@temple-legal.co.uk

'Really Quite Interesting?

What's caught our eye recently

By Morag Lewis, Senior Underwriter

Private hospital liability post Bartolomucci

https://www.dacbeachcroft.com/en/What-we-think/Private-hospital-liability-post-bartolomucci

This article provides an insight as to the required close examination of specific contractual terms for private hospital operators when drafting patient terms and conditions. In the light of the case's prominence and the issues it raises, it is recommended that private hospital operators review their patient terms and conditions to ensure they clearly define the boundaries of liability between the hospital, the patient and the consultant.

Addenbrooke's Hospital surgery review expanded to 800 patients after care issues in operations on children identified

https://www.irwinmitchell.com/news-and-insights/newsandmedia/2025/march/addenbrookes-hospital-surgery-review-expanded-to-800-patients-after-issues-in-operations-on-children

This article relates to a group of specialist medical negligence lawyers from Irwin Mitchell solicitors supporting parents due to their concerns about operations performed by a surgeon at Addenbrooke's hospital in relation to hip surgery.

£5.2m compensation agreed for young mother for delayed diagnosis of cauda equina syndrome

https://www.stewartslaw.com/news/5-2m-compensation-agreed-for-young-mother-for-delayed-diagnosis-of-cauda-equina-syndrome/

This is the highest CE award recorded by law firm Stewarts. The amount was £5.2m due to the claimant suffering completed paralysis of her bladder and bowels. Now reliant on a wheelchair, but due to the award she has been able to buy a home that can be adapted to suit her.

Judges tell government not to extend whiplash tariff model

https://www.legalfutures.co.uk/latest-news/judges-tell-government-not-to-extend-whiplash-tariff-model

This article refers to the whiplash tariff. There is a warning by the judiciary not to extend the same to include larger or different types of claims. An increase was recommended to reflect inflation and to also include a 'buffer' to consider predicted inflation until the next review in 2027.

Whiplash tariff to rise on 31 May but fixed costs review delayed

https://www.legalfutures.co.uk/latest-news/whiplash-tariff-to-rise-on-31-may-but-fixed-costs-review-delayed

As per the above, the whiplash tariff is due to rise on 31st May 2025 but an initial review of the FRC regime will be delayed until the end of the year - due to insufficient cases!

'Don't just take our word for it'

"I have had the benefit of Temple ATE insurance for my company's clients for something like 15 years. Before that we had various ATE providers, but since we moved to Temple we have never looked back. In all that time we have insured countless claims with Temple, and I cannot think of a single case where we have been dissatisfied. Their product is easy to understand, they are easy to deal with and their reporting requirements are not onerous. Finally, the premium is reasonable too and so we have had little no problem recovering it. I cannot recommend Temple enough."

Kevin Liddy - Liddy's Solicitors

ATE Insurance in Action: Case Studies

By Shelley Carrick-Forrester, Trainee Underwriter

Clinical negligence birth injury claim: Master X v NHS Trust

***Case ongoing at time of writing (May 2025)**

What has happened so far?

This case concerns a clinical negligence claim arising from a birth injury where liability has been largely admitted. Temple has provided ATE insurance to assist the claimant's solicitors in pursuing appropriate damages following the partial settlement on liability.

Master X suffered a brachial plexus injury during his delivery at the Defendant NHS Trust's hospital. Initially, liability was denied, and court proceedings were issued. Following the issue of proceedings, negotiations regarding liability took place between the parties.

Liability was ultimately agreed on a 95% basis, with judgment entered in favour of Master X to reflect this agreement. The proceedings have been stayed to focus on quantifying the claim.

The case was initially funded under a Legal Aid certificate. However, due to the limitations on hourly rates recoverable under Legal Aid, the claimant's solicitors sought to switch funding to a Conditional Fee Agreement (CFA) supported by After the Event (ATE) insurance.

Temple was approached and agreed to provide ATE insurance to protect the Claimant against the risk of adverse costs should settlement negotiations prove unsuccessful.

Matter value: £750,000

Case status: ATE insurance policy issued; case ongoing

Team member involved: David Stoker, Senior Underwriter

ATE insurance in action: Personal injury secondary victim claim: Ms X v Mr X

***Case ongoing at time of writing (May 2025)**

What has happened so far?

This case involves a secondary victim claim following a fatal road traffic accident, where the claimant suffered psychiatric injury after witnessing the immediate aftermath. Temple has provided ATE insurance to support the claimant as the case proceeds.

The claim arises from a tragic road traffic accident in March 2020. A pedestrian, a close family member of the claimant, was crossing at a road junction when he was struck by the Defendant's vehicle. At the time of the collision, the Defendant was travelling at 49 mph in a 30 mph zone and was under the influence of drugs and alcohol.

The family member sustained a traumatic brain injury and other serious injuries. He was taken to Queen Elizabeth Hospital in Birmingham but sadly died shortly after arrival.

The claimant was taken to the hospital where she witnessed her family member in a non-responsive state. She suffered immediate psychological trauma as a result, giving rise to her claim as a secondary victim under personal injury law.

Temple was asked and agreed to provide ATE insurance to Ms X, covering the risk of adverse costs and disbursements in the event that her claim is unsuccessful

Matter value: £25,000

Case status: ATE insurance policy issued; case ongoing

Team member involved: Peter Cornish, Senior Underwriter

To read more of Temple's clinical negligence case studies, click here .

Find out more about ATE Insurance for clinical negligence claims click here.

To discuss your requirements please email morag.lewis@temple-legal.co.uk or call 01483 514881

CLINICAL THINKING

Solicitor updates and insights on clinical negligence and personal injury topics

temple legal protection

Out and about in Spring 2025

By John Durbin, Senior Business Development Manager

On the 19th March, John Durbin and Lisa Fricker headed south to Bournemouth to exhibit at AVMA's 35th Annual Clinical Negligence Conference. Across the two days the conference saw over 400 delegates attend, with many visiting the Temple stand during the breaks to catch up on the latest ATE and disbursement funding products and sample some giveaways. Laura Cates from Switalskis was the lucky prize draw winner and was presented with a pair of Beats headphones.

Looking ahead, you will next find us at Celtic Manor, exhibiting at the APIL Advanced Brain and Spinal Cord Injury Conference on the 14-16 May. Attending will be John Durbin and Morag Lewis. John will then be heading to Birmingham on June 5th to exhibit at the SCIL conference. We hope to catch up with many of our coverholders at these events and many more during the rest of 2025.

If you're not going to be at these conferences but would like to find out more about ATE insurance and disbursement funding for your firm and clinical negligence clients, or If you have an idea for an event or a subject and speaker you think we should hear about, please email john.durbin@temple-legal.co.uk

Contacts:

Matthew Best | Director of ATE Partnerships

Matt, with Temple since 2011, oversees personal injury and clinical negligence underwriting. Now Director of ATE Partnerships, he is respected for building strong industry relationships and driving team success.

01483 514804 | matthew.best@temple-legal.co.uk

John Durbin | Senior Business Development Manager

John, with 19+ years in legal expenses and 17 in ATE insurance, leads the development of Temple's clinical negligence and personal injury offerings and is known for his approachable style.

07917146290 | john.durbin@temple-legal.co.uk

Lisa Fricker | Head of Solicitor Services & Quality Assurance

Lisa has 15+ years' legal insurance experience. She manages internal and external reviews, ensuring high service standards and strong solicitor relationships are maintained.

01483 514872 | lisa.fricker@temple-legal.co.uk

David Stoker | Senior Underwriter

David supports personal injury and clinical negligence teams, contributing to ATE underwriting and helping assess delegated schemes to ensure clients receive the best from Temple's services.

01483 514808 | david.stoker@temple-legal.co.uk

Morag Lewis | Senior Underwriter

Morag plays a key role in personal injury and clinical negligence underwriting and is pursuing CILEX and insurance qualifications to further enhance her skills and service delivery.

01483 514881 | morag.lewis@temple-legal.co.uk

Bipin Regmi | Senior Underwriter

Bipin, a qualified Solicitor since 2019, brings deep expertise in negligence claims and risk assessment, contributing strong legal insight and analytical judgment to Temple's underwriting process.

01483 514414 | bipin.regmi@temple-legal.co.uk

Oliver White | Underwriter

Oliver supports both Clinical Negligence & Personal Injury and Commercial teams, assessing case coverage and managing delegated authority schemes to ensure clients' ATE insurance needs are met.

01483 514870 | oliver.white@temple-legal.co.uk

Shelley Carrick-Forrester | Trainee Underwriter

Shelley, a former medical secretary with a law diploma, joined Temple in 2022. Now a Trainee Underwriter, she brings legal and clinical experience to support clients with professionalism and attention to detail.

01483 514817 | shelley.carrick-forrester@temple-legal.co.uk

Temple Legal Protection
One Bell Court, Leapale Lane, Guildford, Surrey GU1 4LY
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