



The

RAG

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# Justice postponed, but not forgotten

**The difficulties facing the UK justice system have, understandably, dropped down the national agenda and off the front pages during this unprecedented year. The challenges facing our NHS, schools, businesses and communities are far more pressing and much more important in most people's day-to-day lives.**

This doesn't mean that the justice crisis has abated though, and the consequences will have a profound impact on many, for years to come. Those already waiting months for a trial or hearing date may now have to wait years, as backlogs resulting from years of cuts and closures have multiplied under the limitations imposed by the coronavirus.

At ARAG, we have already seen the impact across our after-the-event insurance business. The numbers of new claims, policies being issued and cases being closed are all down significantly. While we expect these metrics to return to normal levels next year, the backlog caused by the pandemic's braking effect will take much longer to address, stretching out the process for many.

The justice system's immediate response to the pandemic and lockdown was better than many might have expected. Like its counterparts in the medical, care, education and many other sectors, the legal profession rolled up its sleeves

and rose to the challenges presented by social distancing and remote working.

Mari Rosser, Head of Medical Negligence at Hugh James, spoke to us about her surprise at how readily the courts and parties adapted to the constraints, but also of her concerns around the longer-term impact the limitations will have on cases. We've worked with Hugh James for several years, but launched a new scheme this year, which provides a range of solutions catering to the firm's needs across a number of practice areas.

Our ATE Account Manager for South East England, Lisa Abrahams, reiterated how well the partner firms she looks after adapted their working practices, in a short piece about her role with ARAG.

We've also heard from Richard Harries, Partner and Head of Medical Negligence and Personal Injury at Barcan+Kirby, about what it's like working with ARAG and how our 7-year partnership has helped the firm.

Just how important ATE insurance is in clinical negligence cases has been highlighted by another long-term ARAG partner, Dutton Gregory. The firm secured a £9 million settlement for a client with serious birth injuries, in a case that had to be transferred from legal aid.

Finally, I cannot talk about ARAG and our pursuit of Access to Justice without mentioning our dear friend and colleague,

Lesley Attu, who we lost to cancer last month. Our Product Development Manager for the last decade, Lesley was a tireless advocate of broadening access to the justice system and probably contributed as much as anyone in our sector to this vital goal, during a 40-year career. **She will be deeply missed.**



MD Tony Buss

CLICK BELOW  
TO GO TO THE ARTICLES

Partnership history:  
Barcan+Kirby

Page  
2

Building an ATE partnership  
Profile: Lisa Abrahams

Page  
3

Personal Injury Awards

Page  
4





## Partnership history: Barcan+Kirby

**Based in Bristol, with offices throughout the city providing services in Family law, Commercial Property, Court of Protection, General Litigation, Conveyancing and Corporate law, Barcan+Kirby has a long history of helping people harmed through medical malpractice and personal injury to assert their legal rights and secure compensation for their often life-changing injuries.**

Today, the firm's medical negligence practice is ranked in band 1 by Chambers and Partners, demonstrating the team's expertise and commitment to delivering a very personal service to clients at what is typically a difficult and stressful time.

Barcan+Kirby has worked with ARAG since 2013, when the introduction of the LASPO reforms transformed litigation and how it is funded. They were particularly uncertain times for the victims of personal injury and medical negligence, that called for a new approach to the insurance of costs risk in such cases.

"It feels like they are part of our team," comments Richard Harries, Partner and Head of Medical Negligence and Personal Injury.

"They understand what we need to support our clients and give us the freedom to get on with what we do on a day-to-day basis, but they also demonstrate a lot of trust and allow us to exercise our judgement.

I remember that they invested a lot of time, when we first started working together, to get to know our business in detail. I think that has really paid off, over the years. We get the independence we need to make everyday decisions, which enables us to be more responsive to clients.

If we do need to speak to somebody at ARAG though, there's a real understanding in the underwriting and claims teams, not just of our business, but of the mechanics of medical negligence claims. I think that helps them to support us, especially in cases that may not be so straightforward or where the circumstances of the claim are more challenging.

It's easy for an ATE provider to say they will consider each case on its own merits, but it takes quite a sophisticated understanding and a fair bit of experience to do that. Where we've had claims that have been transferred from another firm, for example, or that may initially have been funded by legal aid, the ARAG team has shown the technical appreciation and confidence to support our decisions.

ARAG has always been a very flexible partner for us, adapting to our needs, but also very pragmatic in their approach to decisions, when we have to make them.

Even now, some eight years since LASPO was passed, there is still a lot of uncertainty about how medical negligence claims are funded, both in terms of challenges to litigation and the potential for more legislation. ARAG has proved to us that they will adapt to whatever the future may hold, and support Barcan+Kirby in the work that we do."



**Richard Harries**  
Partner and Head of Medical Negligence and Personal Injury

**Barcan+Kirby**



## Building an ATE partnership

**ARAG has launched a funding scheme partnership with award-winning, top 50 law firm, Hugh James, which will allow coverage for all of the firm's claimant work. Head of Medical Negligence, Mari Rosser explained how the scheme benefits the firm.**

“Our firm has a broad base of claimant litigation work, spanning from clinical negligence and neurolaw cases for individuals with serious life-changing injuries, to large-scale group litigation in our industrial disease and environmental departments. The intention behind the partnership was to appoint an after-the-event (ATE) insurance provider to provide coverage for all our claimant work.”

Stephen Webber, head of Hugh James's individual services division and recipient of this year's Clinical Negligence Lawyer of the Year award at the Personal Injury Awards, added: “What we were looking for was an ATE provider that would allow us to offer our clients competitive premiums across all areas of our business, as well as the certainty and security afforded to them by an A rated insurer.”

“What sets us apart at Hugh James is that we are not afraid of the novel, complex or difficult cases which other firms may shy away from. Early on in our dialogue with ARAG, we recognised a partner who would trust in our skill and experience, not only in the more straightforward cases, but also in those cases which are more challenging and harder fought.”

*Click here to read a longer version of this article which was published to members in the Civil Litigation section of the Law Society's website.*

After-the-event insurance has become indispensable in many areas of civil litigation and the diminishing funding options for clients mean that its use is still likely to grow. Whether a firm has just a handful of fee earners or hundreds, like Hugh James, an ATE scheme will help protect their clients and the business.

ARAG also offers a disbursement funding solution, which means firms don't have to rely on their business overdraft or ask clients to enter into consumer credit agreements to fund ongoing costs in cases that can take years to resolve. ARAG has found that its funding facility has become more and more appealing to firms as lending tightens and is getting more expensive.

ATE insurance can be a tricky class of business for providers to underwrite, which is one of the reasons that there have been some significant failures in the market, in recent years. Whatever solution a firm decides upon, it's vital that the provider is subject to UK regulation. Schemes that are underwritten in less well-regulated territories are much more likely to fail or be withdrawn, and the lower solvency requirements demanded offshore mean that the firm could be left in a very difficult position.

Building an ATE partnership depends on a mutual understanding and plenty of groundwork. ARAG is prepared to invest the time and resources in developing long-term relationships that help to ensure their success.

### Profile

**Lisa Abrahams**  
ATE Account Manager  
at ARAG UK



**Having arrived at ARAG back in 2014, Lisa now has almost 20 years of legal expenses insurance experience including over a decade working specifically in the after-the-event market.**

As well as already managing business partner accounts before she joined us, she first developed her ATE knowledge and skills working as an underwriter. So, like many of her colleagues in our ATE business development team, she has a very thorough, technical understanding of our products.

Today, Lisa looks after our ATE business partners in South East England, making sure the solicitor firms we work with have all the advice, training and support they need to ensure our products give their clients the best possible chance of securing access to justice.

At the same time, Lisa is also responsible for developing relationships with new firms and explaining how ARAG's after-the-event insurance and disbursement funding solution would work for their practice.

“The aspect of the job that I've always enjoyed most is the variety,” she says. “In normal times, I could be in Bristol, London and Southampton all in the same week. I like getting out to meet the people we work with and helping them to find solutions that will work for their clients.”

That's obviously changed over the past few months, but I feel fortunate that ARAG was very well set-up for the switch to remote working, which was remarkably seamless. I've also been impressed with the way solicitors have coped with the lockdown and overcome the enormous challenges that it created for them, continuing to meet clients, hold case conferences and even attend hearings.

The limitations have forced us all to be creative. I've enjoyed looking into different ways to meet and entertain our partners, such as virtual wine and chocolate tastings. I'm looking forward to arranging some seasonal events for the festive period, as I think we'll all need some respite from the lockdown by the time we get to Christmas.

ARAG is a very supportive company and gives staff plenty of opportunity to be heard and contribute to how we all work and the products we develop. I like to think we reflect that in our relationships with our business partners.

We share a strong commitment to providing access to justice, whether it's for one particular client or society as a whole. I think it's that underlying sense of a common purpose that makes my job so rewarding and enjoyable.”

## Personal Injury Awards

We were thrilled to retain the 'Insurance Provider of the Year' title at the Personal Injury awards 2020! Presenting the award (virtually), Matthew Maxwell Scott, Executive Director of ACSO, commented; "the winner demonstrated an effective, multi team approach and adapted to the difficulties presented by Covid-19 very quickly. A successful and robust response to legal challenges also shows the winners commitment to personal injury claimants."

Although we missed being in Manchester for the usual celebrations with our friends and partners in the PI sector, the team still managed a celebration together online! Congratulations to all the finalists and we hope to see you in person next year.



**WINNER**  
**INSURANCE PROVIDER OF THE YEAR**

#PIAwards



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