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ADVOCATES

Claims by secondary victims in light
of *Paul and Anr v Royal
Wolverhampton NHS Trust*

What might constitute an accident in
a medical setting?

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Secondary Victims:

Paul and another v Royal Wolverhampton NHS Trust [2024] UKSC 1

- The Supreme Court had to decide whether there was a duty of care owed to members of a patient's close family to protect them against the risk of psychiatric illness caused by the experience of witnessing the death or medical crisis of their relative from a condition which a doctor had negligently failed to diagnose or treat.
- The Supreme Court held that there was no such duty owed.



Secondary Victims:

Paul and another v Royal Wolverhampton NHS Trust [2024] UKSC 1

It was held in Paul (at para 73) that “the requirements established by the decision in Alcock were, in our view, accurately and authoritatively summarised in Frost.”

- (i) there require to be close ties of love and affection between the claimant and the person killed, injured or imperilled;
- (ii) the claimant was close to the incident in time and space (present at the accident or its immediate aftermath);
- (iii) the claimant directly perceived the incident rather than, for example, hearing about it from a third person and the psychiatric injury was caused by such direct perception.



Secondary Victims:

Paul and another v Royal Wolverhampton NHS Trust [2024] UKSC 1

- *Alcock* remains good law but it only applies to cases where there has been an “accident” and that includes cases arising in the context of medical negligence.
- There is a clear distinction drawn between an “accident” and a “medical crisis brought about by an untreated disease.”



Secondary Victims:

Paul and another v Royal Wolverhampton NHS Trust [2024] UKSC 1

On the question of defining an “accident”, at paras 105 and 108, of the judgment in Paul, the Supreme Court said that:

“An accident is an external event which causes, or has the potential to cause, injury: it is not the injury, if there is one, caused by that event.....First, an accident is, by definition, a discrete event in the ordinary sense of that word, meaning something which happens at a particular time, at a particular place in a particular way. Whether someone was present at the scene and whether they directly perceived an accident are in the most cases questions which admit of a clear and straightforward answer. These criteria for determining whether a person is eligible to claim compensation as a secondary victim therefore have the great merit of providing legal certainty”.



Secondary Victims:

Paul and another v Royal Wolverhampton NHS Trust [2024] UKSC 1

- An accident (an event external to the primary victim) will rarely arise in the medical negligence context.
- However, the possibility of claims by secondary victims arising from accidents in a medical setting was not excluded (see para 123).
- The Supreme Court declined to comment on what might constitute an accident in a medical setting.



Secondary Victims:

Paul and another v Royal Wolverhampton NHS Trust [2024] UKSC 1

- Starting point is to apply the Supreme Court's definition of an accident. Was it an *external event which caused injury*? Was it a *discrete event*? Was it something that happened *at a particular time, at a particular place in a particular way*? It is clear that an omission cannot constitute an accident because failing to do something is not an external event which causes injury.



Secondary Victims:

Paul and another v Royal Wolverhampton NHS Trust [2024] UKSC 1

The following examples of positive actions or interventions, during labour, causative of fetal demise prior to birth, *may* conceivably fall within the definition of an accident given in *Paul*:

- (i) the excessive and inappropriate use of force during delivery of the baby;
- (ii) the mis-use of medical instruments, such as forceps during delivery;
- (iii) other procedures, such as actions to artificially augment labour unnecessarily,

which actions are deemed by an appropriately qualified skilled witness to be actions which no ordinarily competent clinician would have carried out if acting with ordinary skill and care (per *Hunter v Hanley* 1955 SC 200) in the particular circumstances of a case.



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