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ADVOCATES

# Clinical Negligence Case Law Update (Part 1)

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3 October 2024



## Secondary Victims:

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

#### **(1) Paul and another v Royal Wolverhampton NHS Trust**

- Received treatment from NHS Trust in 2012 for heart-related issues.
- Alleged failure to diagnose and treat significant coronary artery disease.
- Suffered fatal cardiac arrest shopping with daughters two years later, in 2014.
- Daughters (aged 9 and 12) witnessed father collapse on street.
- Daughters sought damages from NHS Trust for psychiatric injuries, as secondary victims, alleging fatal consequences arose from negligence in 2012.



## Secondary Victims:

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

#### **(2) Polmear and another v Royal Cornwall Hospitals NHS Trust**

- 6-year-old girl investigated in January 2015 following episodes of fatigue, shortness of breath and pale complexion.
- Admitted failure to diagnose and treat pulmonary veno-occlusive disease.
- Became unwell during school trip. Father collected and returned to school. Rapid deterioration. Failed attempts to resuscitate.
- Parents both present at school during failed resuscitation and travelled with daughter to hospital where she was pronounced dead.
- Parents sought damages for psychiatric injuries from NHS Trust, as secondary victims, alleging fatal consequences arose from negligence in January 2015.



## Secondary Victims:

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

#### **(3) Purchase v Ahmed**

- Appointment with out-of-hours GP on 4 April 2013 following several weeks of illness with symptoms of weakness, dizziness and difficulty breathing.
- Alleged failure to properly diagnose and treat severe pneumonia.
- Condition worsened in subsequent days and died in bed.
- Mother discovered motionless daughter on returning home. Attempted resuscitation and witnessed further failed resuscitation. Discovered voicemail from daughter from shortly before her arrival with sound of “dying breaths”.
- Mother sought damages for psychiatric injuries from GP, as a secondary victim, alleging fatal consequences arose from negligence on 4 April 2013.



## Secondary Victims:

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

#### Common issues:

- Alleged failures to diagnose and treat medical conditions, which ultimately proved fatal.
- *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 A.C. 310
  - (i) Close tie of love and affection to a primary victim
  - (ii) Witness the “event” with their own unaided senses
  - (iii) Proximity to the “event” or its immediate aftermath
  - (iv) Psychiatric injury caused by (sudden shocking) event



## Secondary Victims:

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

Appeals refused (6:1 majority):

*"142. We have not been asked on these appeals to alter or abrogate the limits on the recovery of damages by secondary victims in accident cases established by the decision of the House of Lords in Alcock. Instead, this court is asked to recognise as analogous a category of cases in which illness is sustained by a secondary victim as a result of witnessing a death or manifestation of injury which is not caused by an external, traumatic event in the nature of an accident but is the result of a pre-existing injury or disease. For the reasons given, we do not consider that such cases are analogous. That conclusion is reinforced by our opinion that the persons whom doctors ought reasonably to have in contemplation when directing their minds to the care of a patient do not include members of the patient's close family who might be psychologically affected by witnessing the effects of a disease which the doctor ought to have diagnosed and treated. Hence there does not exist the proximity in the relationship between the parties necessary to give rise to a duty of care."*



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The Supreme Court clarified that the following are unnecessary elements of a secondary victim claim:

- The requirement for a pursuer to experience a 'sudden shock' – it is enough to demonstrate a causal connection between witnessing the event and the illness suffered (paras 73 to 74).
- The requirement for the event to be objectively 'horrifying' – the test is inherently subjective and there is no "Richter scale of horror" (para 76).
- The need to determine whether there was a one event or several separate events or if those amounted to an "inexorable progression" (paras 79 to 80).
- The requirement for the accident or event be close in time to the negligent act or omission (paras 94 to 96).





## Secondary Victims:

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

What constitutes an accident in a medical setting?





## Lost Years:

# CCC -v- Sheffield Teaching Hospitals NHS Foundation Trust [2024] 1 W.L.R. 1307

- Decision of High Court of Justice July 2023
- Permission to 'leapfrog' appeal to the Supreme Court granted February 2024
- Claim for damages on behalf of eight-year-old who suffered from cerebral palsy, severe brain damage and spastic quadriplegia as result of clinical negligence at birth.
- Liability admitted. Damages award included:
  - PSLA - £390,000;
  - Past gratuitous care provided by mother: £125,230 (with no deduction from the agreed commercial value of that care);
  - Installation of hydrotherapy pool: £607,100.





## Lost Years:

### CCC -v- Sheffield Teaching Hospitals NHS Foundation Trust [2024] 1 W.L.R. 1307

- Where a living claimant has had their life shortened by an injury, they can seek damages for the loss of sums they would have received during the period of which they have been deprived (the 'lost years'). This is assessed after deduction of a sum to reflect the claimant's likely living expenses during the lost years.
- Held: refused award for lost years as bound by *Croke v Wiseman* [1981] 3 All ER 852.
- In England, following *Croke*, claims for lost years are not typically available to children on the basis that those claims are too speculative.
- This position has been criticised in subsequent English cases (see for example *Totham v King's College Hospital NHS Foundation Trust* [2015] EWHC 97 (QB) at paras 44 to 48).





# Lost Years: CCC -v- Sheffield Teaching Hospitals NHS Foundation Trust [2024] 1 W.L.R. 1307

Cf. position in Scotland

## **Damages Scotland Act 2011, Section 1**

- (5) In assessing the amount of any patrimonial loss in respect of the period after the date of decree the court is to assume that the pursuer will live until the date when death would have been expected had the injuries not been suffered (the “notional date of death”).
- (6) Such part of that amount as is attributable to the period between the expected date of death and the notional date of death (the “lost period”) is to be assessed as follows--
  - (a) the court is to estimate what (if anything) the pursuer would have earned during the lost period through the pursuer's own labour or own gainful activity had the injuries not been suffered,
  - (b) the court may, if it thinks fit, add to the amount so estimated (whether or not that amount is nil) an amount equivalent to all or part of what it estimates the pursuer would have received by way of relevant benefits during the lost period had the injuries not been suffered, and
  - (c) the court is then to deduct, from the total amount obtained by virtue of paragraphs (a) and (b), 25% of that amount (to represent what would have been the pursuer's living expenses during the lost period had the injuries not been suffered).





Lost Years:

CCC -v- Sheffield Teaching Hospitals NHS Foundation Trust  
[2024] 1 W.L.R. 1307

Cf. position in Scotland

**Damages Scotland Act 2011, Section 1**

- (7) But, if satisfied that it is necessary to do so for the purpose of avoiding a manifestly and materially unfair result, the court may apply a different percentage to that specified in subsection (6)(c).





## *Ex Turpi Causa:*

### Lewis-Ranwell -v- G4S and Ors [2024] 2 W.L.R. 1377

- Claimant (Respondent in the Appeal) suffered from schizophrenia.
- 8 February 2019: Arrested for burglary. Released on bail.
- 9 February 2019: Arrested for assaulting elderly man (who he believed to be a paedophile) with a saw.
- During both periods of detention behaved violently and erratically and was apparently mentally very unwell. Was seen or spoke to mental health professionals employed by G4S and the NHS Trust but no face-to-face assessment or Mental Health Act assessment took place.
- 10 February 2019: In the course of a serious psychotic episode, attacked and killed three elderly men in their homes in Exeter in the delusional belief that they were paedophiles.





## *Ex Turpi Causa:*

### Lewis-Ranwell -v- G4S and Ors [2024] 2 W.L.R. 1377

- Charged with murder but following trial was found not guilty by reason of insanity.
- Commenced proceedings against various parties, including the Appellants, seeking damages for personal injury, loss of liberty, loss of reputation, and 'pecuniary losses' as well as an indemnity in respect of any claims brought against him "*as a consequence of his violence towards others on 9–11 February 2019*".
- Applications by the Appellants to strike-out claim on basis of *ex turpi causa* (ie he ought not to be entitled to claim for losses arising from his own wrongful actions).
- Held at first instance: strike-out applications dismissed and claims allowed to proceed as there was an absence of "turpitude" if finding of insanity.
- Appellants appealed.





## *Ex Turpi Causa:*

### Lewis-Ranwell -v- G4S and Ors [2024] 2 W.L.R. 1377

- Appeal Court refused appeal (2:1 majority) – “*someone who was indeed insane should not be debarred from obtaining compensation for the consequences of their unlawful act which they did not know was wrong and for which they therefore had no moral culpability*” (per Underhill LJ at para 104).
- Permission to appeal to the Supreme Court granted on 23 May 2024.
- Cf position with diminished responsibility (see *Henderson v Dorset Healthcare University NHS Foundation Trust* [2020] UKSC 43).





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