

Lauren Sutherland KC (Scot)

Called: 1996

Silk Date: 2016 (Scot)



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Practice Overview

Chambers & Partners 2024 (Clin Neg) Band 1

“Excellent on her feet and very well prepared.”

“She is pragmatic, great at managing expectations and very practical.”

Lauren has advocacy experience gained over 30 years in both personal injury and clinical negligence work. She has considerable experience in catastrophic injury cases and has a particular interest and expertise in cerebral palsy, cancer and brain injury cases. She was instructed in the Scottish Product Liability cases relating to transvaginal mesh. She is instructed in personal injury Group Litigation in Scotland involving musculoskeletal injuries sustained by Kenyan tea-pickers. She has been involved in a number of neurosurgical cases relating to failures of the now disgraced neurosurgeon Professor El Jamel.

She appears regularly in court and has appeared in Scotland in the Sheriff Court, Outer House of the Court of Session, First and Extra Division of the Appeal Court and the Supreme Court. She has conducted many complex Fatal Accident Inquiries into hospital deaths. She has conducted one of the few clinical negligence jury trials that has taken place in Scotland.

She is a CEDR accredited mediator. She is clinical negligence lead for PEOPIL a not-for-profit organisation that seeks to promote judicial co-operation and mutual knowledge of legal and judicial systems in European jurisdictions. She was secretary to the Professional Negligence Bar Group. She is a member of the Commonwealth Lawyers Association.

She was part of the legal team for the claimant in the landmark case of *Montgomery v Lanarkshire Health Board* and presented the first argument for the claimant in the Appeal Court in Scotland.

In 2009 she was one of two Counsel appointed by the Scottish Government to lead the Vale of Leven Public Hospital Inquiry into the outbreak of *C difficile* at the hospital. This lasted 3 years and was an extensive inquiry into medical and nursing issues and infection control. She was also invited to participate in the review panel led by Professor Sheila McLean into the introduction of no-fault compensation in Scotland.

She has lectured extensively to lawyers and doctors on clinical negligence and personal injury and for many years she taught consent to undergraduate dental and medical students. She teaches doctors on court craft and writing reports in conjunction with Inspire Medilaw a provider of first class conferences for lawyers and doctors.

Since 1995 she has been the contributing editor on clinical negligence to the Reparation Bulletin in Scotland and she contributed the chapter on Medical Law and Human Rights to the main Scottish textbook on Human Rights.

She has written a book on the law on consent post *Montgomery* and this is published by Law Brief Publishing and is also available on amazon with authors proceeds going to children with special needs.

Lauren undertakes conferences and hearings in-person, remotely and a hybrid of remote/in-person working.

Lauren has a blog where she posts articles on issues of law and medicine. laurensutherlandqc-lawandethics.com

Education and Appointments

Head of Medical Negligence, PEOPIL (Pan European Organisation of Personal Injury Lawyers), February 2020.

2020 - CEDR accredited mediator

Contributing Editor to the Reparation Bulletin on Medical Negligence produced by W Green. Involves reporting and commenting on current medical negligence cases.

Commonwealth Lawyers Association - PEOPIL

Member of APIL

Member of American Association of Justice (AAJ)

Administrative

Petition of Laureen Joan Fargie [2008] CSOH 117

Petition for review of the eligibility criterion of the Skipton Fund which restricted payment to representatives of persons who died having been infected with Hepatitis C as a result of infected blood products or tissue from the NHS.

Petition for Judicial Review of Fairlie

Judicial Review in relation to the administration of the Skipton Fund in relation to compensation payments for Hepatitis C

Petition for Judicial Review of Hayleigh Reynolds

Judicial Review in relation failure to provide drug treatment to a young girl

Petition Cameron Fyfe v The Council of the Law Society and Others (Inner House) 2017 CSIH 6

Personal Injury

Widdowson v Liberty Insurance NHS Grampian NHS Highland [2021] CSOH 15

This was a fatal case and an action was brought against both the insurers of a car involved in a road traffic accident which caused injury to Mr Widdowson and also two hospitals for failures in care after the accident. All have eventually admitted liability for the death. The case is important in considering issues of apportionment of responsibility amongst the defenders and the principles to be applied.

Hughes v Turning Point Scotland [2019] CSOH 42, 2019 S.L.T. 651

Claim for Damages in respect of a duty of care owed by a charity to a man who attended in withdrawal from alcohol. Issues of whether *Huntley v Hanley* test applied to the actions of the charity, whether they were rescuer in law, duty of care and contributory negligence.

Gloria Urquhart v Fife Primary Care NHS Trust

(Lord Brodie) Nursing personal injury case

Public inquiries & Fatal Accident Inquiries

Clinical Negligence

Almond-Roots v El Jamel and NHS Tayside CSOH 130 https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2021csoh130.pdf?sfvrsn=4c25c0a_1

This was a claim for cauda equina as a result of failures in diagnosis and surgery against a surgeon on a private basis and against the hospital where the pursuer was treated. Eventually liability was admitted. Damages were eventually agreed but the case proceeded on apportionment of liability between the defenders. Damages were nearly 3 million pounds which was one of the highest settlements in a cauda equina case.

Jennifer McCulloch v Forth Valley Health Board [2021] CSIH 21

<https://scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2021csih021.pdf?sfvrsn=0>

This was the appeal heard by the Second Division of the Inner House in Scotland in the previous case related to misdiagnosis of a pericardial effusion and consent

Widdowson v Liberty Insurance NHS Grampian NHS Highland [2021] CSOH 15

<https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2021csoh015.pdf?sfvrsn=0>

This was a fatal case and an action was brought against both the insurers of a car involved in a road traffic accident which caused injury to Mr Widdowson and also two hospitals for failures in care after the accident. All have eventually admitted liability for the death. The case is important in considering issues of apportionment of responsibility amongst the defenders and the principles to be applied.

Jennifer McCulloch and others v Forth Valley Health Board [2020] CSOH 40

Proof over 8 days in which the pursuers claimed that there had been negligence in a cardiologist's care. There were difficult issues relating to diagnosis of a pericardial effusion and consent

https://www.bailii.org/scot/cases/ScotCS/2020/2020_CSOH_40.html

Vincent Friel v Dr Brown [2019] CSOH 30; [2020] CSIH 7

Procedure Roll Debate and Reclaiming Motion on the effect of S10 of the Law Reforms (Misc Prov) (Scotland) Act 1968 and what constitutes abuse of process in Scotland

Allan Johnston v NHS Grampian [2019] CSOH 90

Clinical Negligence case on consent

James Carr v R H Independent Health Care Limited [2018] CSOH 82

Procedure Roll Debate on the procedural issues of the effect of a decree of reduction

Montgomery v Lanarkshire Health Board [2015] UKSC11

Landmark case on consent to medical treatment in front of 7 judge bench at UKSC. Cerebral palsy case involving diabetic mother with large baby who was not advised of the risks of mechanical problems in labour or shoulder dystocia. Shoulder dystocia occurred during delivery and the child was born with cerebral palsy and a brachial plexus injury. Inner House decision [2013] CSIH 3; 2013 SC 245

Ryan Coyle v Lanarkshire Health Board [2014] CSIH 78

Appeal by the Health Board against the decision of Lord Tyre in the first instance. Appeal related to the question of whether he correctly interpreted the evidence in relation to the timing of delivery. The appeal was unsuccessful.

Ryan Coyle v Lanarkshire Health Board [2013] CSOH 167

Cerebral palsy case involving delay in delivery of child. The case involved allegations of obstetric and midwifery negligence. Was one of the few cerebral palsy cases that have proceeded successfully to proof.

Evelyn Telfer on behalf of Mirren Telfer v The Royal Infirmary of Edinburgh NHS Trust

Cerebral palsy case proceeded to proof on all issues but settled after a week of evidence following admission of fault.

Marika Komori v Tayside Health Board [2010] CSOH 30

Case involving an injury sustained following an arterial blood sample Sought recovery of all documentation held by the Health Board in relation to the complaint made by the claimant

Brenda Louise Rennie v Lothian Health Board [2010] CSOH 61

This was a cerebral palsy case which considered the issues of delay and mora in the context of litigation.

Greenhorn v South Glasgow University Hospitals NHS Trust [2008] CSOH 128

The claimant suffered nerve damage following a colposuspension procedure. Considered the issue of res ipsa in the context of clinical negligence

Hepburn v Royal Alexandra Hospital and Another [2008] CSOH 81

Argument in the Outer House relating to delay in progress of litigation in the context of a clinical negligence claim

J.S. v Lothian Health Board 2009 SLT 689

This case related to a failure in testing for cystic fibrosis. The case considered the important issue of the non delegable duties of Health Boards in terms of matters such as test results

Rosemary Lenton v Ayrshire and Arran Health Board

Involving a knee replacement surgery without prophylactic antibiotics which resulted in gross destruction of the knee with the result the claimant was wheelchair bound. Issues of orthopaedic negligence.

Learmont v Dr Vernon

Action against a GP following the death of a young woman with meningitis. Difficult issues related to causation and whether the death could have been avoided had she been referred to hospital at an earlier date

Zoe Campbell v Highland Health Board

Cerebral palsy case involving a breach delivery which proceeded to proof on all issues and then settled after evidence.

Eric Robertson v Forth Valley Health Board (Extra Division)

Full evidential appeal before the Extra Division which settled after a number of weeks of hearing

Eric Robertson v Forth Valley Health Board 13/4/2005

(Temporary Judge Coutts) Clinical negligence case related to the failure to diagnose an aneurysm resulting in the patient suffering a stroke when he underwent surgery

Christopher Muir and Others v Grampian Health Board Lord Abernethy CSOH 17/3/2000

Fatal case following the death of a woman as a result of a heart attack. Issues of whether she should have been recognised as at risk of cardiac problems and whether she should have been discharged from hospital. One of the first cases to raise the issue of whether pursuer's should lead in evidence the doctor's being blamed.

Maureen Trodden v Greater Glasgow Health Board

Case involving breast reduction surgery which left the pursuer with grossly reduced breasts. Issues of negligence in cosmetic surgery.

Richard Adamson v Lanarkshire Health Board

Medical Negligence jury trial. A young boy had a swelling in his testicle and this was removed without testing on the assumption that the swelling was cancerous. Subsequently confirmed to be a blood clot. One of the few medical negligence cases that has proceeded to jury trial.

Desmond McCafferty v Greater Glasgow Health Board

Limitation argument in relation to raising of proceedings in a Clinical negligence case

Inquiries and Inquests (with a P.I. or medical content)**Vale of Leven Hospital Inquiry**

This was set up by Scottish Government and Chaired by Lord McLean to investigate deaths at the Vale of Leven Hospital as a result of C difficile infection. She was appointed as the Junior Counsel to the Inquiry which lasted over 3 years and published in November 2014. The Inquiry had a wide ranging remit to review issues of nursing practice, medical practice, tissue viability, nutrition in the elderly, infection control and clinical governance.

Inquiry related to the Glasgow Airport Rail link

Junior Counsel instructed in the planning Inquiry related to the Glasgow Airport Rail link. This was a proposed rail link between Glasgow Central Station and Glasgow Airport

Inquiry into the death of Debra Law

(represented the family) Related to the death of a young woman following the administration of an anaesthetic by a junior doctor and required a detailed knowledge of anaesthetics and the technique for rapid sequence induction

Inquiry into the death of Linda Gibson

(represented the family) Related to the death of a young woman following coning of her brain. This was a lengthy Inquiry with complex medical evidence in relation to epilepsy, neurology, infection and the mechanism of brain swelling together with the interaction of drugs on this process

Inquiry into the death of Stephen Miller

(represented the family) Related to the death of a young boy following a massive pulmonary thromboembolism and involved complex issues in relation to haematology, the mechanism of clotting and the interaction of drugs on this process

Inquiry into the death of Simon Dolan

(represented the family). Related to the death of a child with Cornelia de Lang Syndrome where there was malplacement of a feeding tube. Paediatric issues and nursing negligence

Inquiry into the death of George Fairlie

(represented the family) Related to the death of an elderly man in a Care Home. This lasted nearly 9 weeks in Paisley Sheriff Court. The case had a number of complex medical issues relating to dementia, pressure damage, vascular issues and diabetes and medical care of the elderly. In addition issues in relation to Social Work Care and the workings of the Care Commission

Inquiry into the death of Lorraine McGalliard

(represented the family). Related to the death of a young girl following an undiagnosed torted ovarian cyst. Gynaecological and surgical negligence

Directory Comments

She is ranked in Chambers UK (Band 1) and The Legal 500 for Clinical Negligence .
Chambers UK have said:

"She's got an encyclopedic knowledge and she handles complex cases with ease." (Chambers 2022)

Strong silk who brings her skills to bear in the full array of clinical negligence and personal injury cases. She is adept at navigating complex causation and quantum issues and is especially knowledgeable about claims relating to cerebral palsy, brain injuries and fatal incidents. Instructing solicitors frequently praise her for her medical knowledge. (Chambers 2021)

"Excellent on her feet and very well prepared." (Chambers 2021)

"She is pragmatic, great at managing expectations and very practical." (Chambers 2021)

"She has an apparently inexhaustible energy to prepare and argue some of the most ground-breaking cases", "A highly regarded and experienced advocate recognised for her personal injury and medical negligence experience" (Chambers 2020)

"She is absolutely superb, and she fights a client's corner pretty fiercely... hugely knowledgeable and really applies herself".

In the 2016 edition she is described as *"Deeply knowledgeable in medical negligence matters. I don't think you could find a more committed advocate to medical negligence cases."* *"She's a real leader in this field; the most specialised claimant clinical negligence advocate in Scotland"*.

In 2017 Chambers say of her *"Her knowledge of the legal and medical aspects of the cases she handles is phenomenal"* *"Absolutely superb at medical negligence cases. She goes the extra mile to understand the expert knowledge."*

Lectures, Seminars and Publications

Publications

Lauren has written extensively in the area of personal injury and medical negligence. She is the author of 'A

Guide to Consent in Clinical Negligence Post-Montgomery published by Law Brief Publishing (2018), contributing editor of Green's Reparation Bulletin on Medical Law and wrote the chapter on Medical Law and Human Rights in Greens Human Rights Looseleaf.

Published Book

Sutherland QC: *'A Guide to Consent in Clinical Negligence Post-Montgomery'*, Law Brief Publishing, 2018.

Published Articles

Since coming to the Bar she has published a number of Articles in the area of Personal Injury and Medical Negligence. She is also a Contributing Editor to the Reparation Bulletin and produces regular reviews and comment on cases decided in the area of medical negligence.

- **Who carries responsibility -moral blameworthiness and causative potency Carolyn Almond-Roots v El Jamel and NHS Tayside** Reparation Bulletin 2022
- **Meadows v Khan The scope of duty in clinical negligence** Reparation Bulletin 2021
- **The right of patients to make autonomous choices: Montgomery v Lanarkshire Health Board: a landmark decision on information disclosure to patients in the UK.** Int Urogynecol J (2021)
- **Does the Bolam Test apply to disputes of fact between experts?** Reparation Bulletin February 2020, issue 152
- **The quality of evidence of normal practice in information disclosure cases post Montgomery.** Reparation Bulletin 2019, 150, 2-4 - Comments on the Supreme Court of Australian Capital territory decision in *Kempster v Healthscope Operations Pty Ltd* on whether a nurse who claimed to have used standard or invariable practice had failed to adopt the standard of care to be expected of a nurse in that position and the evidential weight to be attached to such assertions.
- **Is coincidental causation sufficient to found liability?** Reparation Bulletin 2019, 147, 4-6 - Comments on the case of *Khan v MNX (CA)* on whether a general practitioner who failed to establish that a patient was a carrier of the haemophilia gene was liable in law for the child's autism as well as haemophilia where the mother would not have become pregnant if she knew she was a carrier. Discussed the 'scope of liability' test and its application in the UK.
- **Montgomery: Myths, Misconceptions and Misunderstandings** Journal of Personal Injury Law Issue 3 2019
- Comments on the arguments made in *Montgomery v Lanarkshire Health Board* in the Supreme Court and the implications of the decision with an analysis of some of the decisions since the case was decided.
- **The Bolam and Hunter v Hanley tests following Montgomery** Reparation Bulletin 2018, 144, 5-8 - Comments on *AH v Greater Glasgow Health Board* on whether doctors failed in their duty of care by failing to advise on the risks inherent in the use of vaginal mesh products. Considers the impact of *Bolam v Friern Hospital Management Committee* and *Hunter v Hanley* and whether the cases still apply to consent cases.
- **LT v Lothian NHS Health Board** Reparation Bulletin 2018, 143 5-8 - Brain damage during birth case where the allegation was the Registrar negligently misinterpreted the CTG trace and failed to expedite the birth. Considers the issue of conflicting expert evidence, impartiality, disclosure and consent.
- **Causation in wrongful birth cases** Reparation Bulletin 2018, 140, 6-8 - Considers the case of *Meadows v Khan (QBD)* on whether there was liability for losses sustained by a woman who had a child with both autism and haemophilia when the woman had only sought to avoid having a child with haemophilia.
- **AW as legal representative of LW v Greater Glasgow Health Board. Reparation Bulletin** 2017, 138, 6-8 - Comments on *AW v Greater Glasgow Health Board* in which a reclaiming motion was refused in relation to the dismissal of an action against 2 midwives in relation to damage suffered by a child pre -delivery.
- **Malone v Greater Glasgow and Clyde Health Board** Reparation Bulletin 2017, 135, 5-7 - Comment on the Outer House decision in *Malone* which was an action for damages against a Health Board in respect of the clinical negligence on the part of a Haematologist which resulted on the claimant suffering a stroke.
- **The introduction of consent cases to existing cases following Montgomery** Reparation Bulletin 2016, 133, 3-6 - Considers with reference to the case law the position on introducing a consent case late in a medical negligence proceedings in the aftermath of *Montgomery v Lanarkshire Health Board*
- **KR v Lanarkshire Health Board** Reparation Bulletin 2016, 132, 6-8 - Examines the Outer House ruling in *KR v Lanarkshire Health Board* where the issue was whether the Registrar managing the labour was under a duty to

make the patient aware of the material risks involved in her labour in accordance with the principles found in *Montgomery v Lanarkshire Health Board* and offer a caesarean section or assisted delivery.

- **Medical Negligence Update** *Reparation Bulletin* 2016, 131, 6-8 - Comments on the Privy Council ruling in *Williams v Bermuda Hospitals Board* the Queen's bench ruling in *Tasmin v Barts Health NHS Trust* and the QBD ruling in *SXX v Liverpool Women's NHS Foundation Trust*

- **Consent to medical treatment and provision of inaccurate information in risks** *Reparation Bulletin* 2015, 127, 5-7 - Examines the Queen's Bench Division ruling in *Connolly v Croydon Health Services NHS Trust* on whether a hospital failed to obtain informed consent to a procedure and whether its continuing treatment of the patient after she had withdrawn her consent invalidated the lawfulness of treatment. Considers whether the right to withdraw consent can be overruled in life threatening situations.

- **Consent post Montgomery** *Reparation Bulletin* 2015, 126, 6-8 - Comments on the Queen's Bench Division ruling in *FM v Ipswich Hospital NHS Trust* on whether to award damages for clinical negligence which resulted in brachial plexus injury during childbirth on the ground that the hospital failed to discuss the risks of possible shoulder dystocia with the mother prior to labour.

- **Causation issues midwifery negligence** *Reparation Bulletin* 2015, 125, 6-8 - Assesses the Outer House ruling in *W v Greater Glasgow Health Board* on whether the failure by midwives to refer to hospital a woman who was 20 weeks' pregnant and displaying symptoms of pre-eclampsia had: (1) caused a delay in the birth of her son; and (2) if so, that delay had caused her son to develop a brain injury.

- **Causation issues in consent cases: where are we now following the decision of the Supreme Court in Montgomery?** *Reparation Bulletin* 2015, 124, 3-6 - Comments on the Supreme Court judgment in *Montgomery v Lanarkshire Health Board* on consent and causation in a clinical negligence claim, if a baby suffered shoulder dystocia during birth and the mother asserted that she would have asked for a caesarean section if she had been advised about the risk. Considers whether the test of causation should be subjective, or objective based on what a reasonable patient would have done.

- **The law finally reflects good professional practice.** *Reparation Bulletin* 2015, 123, 4-8 - Reports on the landmark Supreme Court judgment in *Montgomery v Lanarkshire Health Board* on whether an obstetrician should have informed a pregnant woman of the risk of shoulder dystocia occurring in a vaginal delivery in her case and the further risk of the baby being born with brain damage. Highlights the significance of the case in developing the law on consent to medical treatment, with particular reference to the legal status of General Medical Council guidance.

- **Causation in Consent Cases - Where are we now?** B. 2015, 124, 3-6

- **C (By his Father and Litigation Friend 'F') v North Cumbrian University Hospitals NHS Trust** B 2014, 121(Dec), 6-8 - An analysis of the application of the Bolitho principles to expert evidence (November 2014)

- **M. as legal representative of RM v Highland Health Board Rep.** B, 2014, 117 (Apr) 7-8 - Bolitho in the CP case

- **Alexander Glancy v The Southern General Hospital NHS Trust - Consent and emergency surgery** B. 2013, 113 (Aug), 24

- **Robin Donald and Others v Ayrshire & Arran Health Board and Others** B 2013, 112 (Jun) 7-8 - GP negligence and failure to diagnose DVT (May 2013)

- **Helen McGlone v Greater Glasgow Health Board**(January 2013) - B. 2017, 135, 5-7 - Failure to diagnose cancer and causation issues

- **Hannigan v Lanarkshire Acute Hospitals NHS Trust** B 2012, 109 (Dec) 6-7 - Analysis of competing expert evidence and the application of Bolitho in a total hysterectomy

- **Marjory Campbell v Borders Health Board** B 2011, 100 (Jun), 7-8 - analysis of the concept of direct responsibility of health boards

- **Nicolas Taaffe v East of England Ambulance Service NHS Trust** (May 2012) *Medical Negligence* B. 2012, 106(May), 7-8

- **Recovery of Damages for a 'seriously handicapped' child - The Case of Rand**

- **The blessing of the unplanned pregnancy - MacFarlane in the House of Lords** (2000) B. 2000, 33(May), 5-7

- **Multipliers Multiplied - Wells and McNulty** B. 1999, 25(Jan), 4-7

- **Failed Sterilisation** (1995) B. 1995, 3(May), 4-7

- **The Brain Damaged Baby** B. 1995, 2(Mar), 3-6

- **"No Fishing" Recovery of Medical Records pre litigation** B. 1995, 1(Feb), 3-5
- **A Single Standard of Care** B. 1995, 6(Nov), 11-12
- **A relationship of Mutual Trust Is Pregnancy a Personal Injury?** B. 1995, 5(Sep), 4-6

Presented Lectures

Lauren has been asked to lecture on a number of different topics in the field of personal injury and medical negligence since going to the Bar. She has given lectures for a number of different organisations including the Scottish Young Lawyers, The Legal Services Agency, The Law Society and Glasgow Graduate School.

Lectures Presented

- Chair at The Anatomy of a Cerebral Palsy Conference, Inspire MediLaw (Edinburgh) 18th September 2023
- Presentation for McCollum Consultants - The dos and don'ts of expert witness work. 13th September 2023
- Chair at the Inspire MediLaw Annual Medico-legal Conference (Scotland) 14th September 2023

Chairing the PEOPIL Birth Injury and Medical Negligence Seminar in Florence, September 2023. <https://www.peopil.com/conferences/aaj-birth-injury-and-medical-negligence-seminar-2023/>

- Presentation for MASIC Foundation *Montgomery*- where are we now? 21 April 2022
- Presentation on '*Patient consent and the Montgomery decision*', Faculty of Dental Surgery, Kings College, London, 17 March 2022.
- British Association of Brain Injury & Complex Case Management '*Accommodation: so much more than a roof over your head*' - Chair and Speaker, Birmingham, 16 March 2022
- Royal Faculty of Procurators in Glasgow: Medical Negligence Half Day Conference 2021 - Chair and Speaker, 29 October 2021
- Chair of conference on Medico Legal issues in Cardiology and Respiratory Medicine, Inspire Medilaw, Edinburgh, October 2021.
- Presentation on '*Anaesthetic Consent*', Oxford Anaesthetic Conference, 28 September 2021
- Invited lecture for National Education Scotland on patient consent and information disclosure to patients, 27 May 2021 (virtual conference)
- Invited presentation at IGB Congress, Holland (online) on the ethical principles that underline patient consent and the development of the law in the UK: '*Montgomery; from Hippocrates to paternalism to patient choice*', 30 March 2021
- Rationing Healthcare in a Global Pandemic - a presentation on the legal position in Scotland. Commonwealth Lawyers Association, 16th March 2021.
- Teaching on expert witness course with Inspire Medilaw, 14 and 15 December 2020 and 7-8 June 2021
- Invited lecture at Royal Faculty of Procurators, Glasgow on "What you want from expert witnesses", 8 December 2020
- PEOPIL's Webinar 'Plastic Surgery Tourism' (Chair), September 2020
- Inspire MediLaw Annual Expert Witness Conference (Chair), September 2020
- Inspire MediLaw Webinar 'Consent post-Montgomery in brain injury claims', September 2020
- Inspire MediLaw Webinar "Conversations on Consent", June 2020.
- PEOPIL's 5th Webinar on Zoom discussing issue of Nursing Homes Claims, June 2020.
- Training Day: Appearing in court, Jacqueline Webb OT's, Oxford, January 2020.
- Presentations at Medical Expert Witness Training for Medical Professionals on: 1. Consent; 2. Courts, Cross and Examination in Chief, Inspire Medilaw, Glasgow, December 2019,

- Presentation on Consent: The journey from Hippocrates to paternalism to patient choice, Scottish Spine Surgeons, November 2019 Royal College of Surgeons, Edinburgh
- Chair of conference on Medico Legal issues in Emergency Medicine, Inspire MediLaw, Edinburgh October 2019
- Presentation: Medical Negligence Update 2019, Royal Faculty of Procurators Annual Conference October 2019
- Inspire MediLaw (Medico-Legal issues in General Surgery) - London (11th September 2019) - (<https://www.inspiremedilaw.co.uk/event/clinical-negligence-conference-september-2019/>) Presenting on consent and causation issues in consent cases.
- Presentation: The Legal Duty of Candour in the UK and whether this is consistent with the approach of the UK Supreme Court in *Montgomery* on the individual patient's right to information disclosure, at the XXXVth International Congress on Law and Mental Health Conference, Rome (July 2019)
- Inspire MediLaw Expert Witness Training for Medical Professionals (June 2019) Teaching on the law, what is an expert witness and appearing in court.
- Chair and speaker (on consent) at Inspire MediLaw Annual Expert Witness Conference (May 2019) Royal College of Physicians in Edinburgh
- Presentation: National Conference for the Association of Breast Surgeons in Glasgow (May 2019)
- Chair at Inspire MediLaw Clinical Negligence Conference (April 2019)
- Part of a panel on consent at the Winter Scientific Meeting for the Royal College of Anaesthetists in London (January 2019)
- Teaching Medical expert witnesses with Inspire MediLaw, Royal College of Physicians and Surgeons Glasgow (December 2018)
- Presentation: Difficult issues in Personal Injury Litigation. The Royal Faculty of Procurators in Glasgow Personal Injury Conference (October 2018)
- Chairing medico-legal conference for Inspire MediLaw (October 2018)
- Invited speaker British Society of Paediatric Dentistry Caird Hall, Dundee on consent (September 2018)
- Invited speaker in Barcelona at the Pan-European Organisation of Personal Injury Lawyers at an international session on consent (June 2018)
- Presenting on Consent and Risk at Manchester International Living Donor Meeting, Innovations and Controversies (April 2018)
- Chairing Negligence in Gynaecology & Obstetrics Conference with Inspire MediLaw, Edinburgh (April 2018)
- Medical Negligence update at the annual Personal Injury Conference. Royal Faculty of Procurators in Glasgow (March 2018)
- Presentation: Consent and Montgomery 3 years on. Where are we now? Royal College of Physicians and Surgeons, Glasgow (March 2018)
- Teaching medical experts with Inspire MediLaw on preparing medical reports and giving evidence in court (January 2018)
- Lecture on Quantum issues in orthopaedic, spinal and amputation cases for Orthopaedic Conference with Inspire MediLaw (30 October 2017)
- Teaching medical experts on preparing medical reports and giving evidence in court, Inspire MediLaw Oxford (October 2017)
- Annual Personal Injury Conference Royal Faculty of Procurators - Presenting on Clinical Negligence and the new rules (October 2015)
- Presentation: Montgomery - A new Approach, Royal Faculty of Procurators (2015)
- Presentation: Understanding the decision of the Supreme Court in Montgomery - Presentation to DAC Beachcroft English offices (July 2015)
- Presentation: Causation in Consent Cases - Where are we now? Ampersand Clinical Negligence Conference (June 2015)
- Presentation: The law on Consent to Medical Treatment - University of Glasgow Medico-legal Society (2014)
- Presentation: Consent and *NM v Lanarkshire Health Board* - Medico Legal Management Clinical Negligence Conference (2014)
- Co-Chair and organiser of the Ampersand Clinical Negligence Conference (June 2014)
- Periodical Payment Orders and Medical Negligence Update - Central Law Training Personal Injury Conference 2014, Glasgow

- Presentation: Medical Negligence Update - Central Law Training Personal Injury Conference 2013, Edinburgh
- Patient Advisors Day - Talk on negligence to Patient Advisors (2012)
- Civil Procedure - Advocates' Clerks training talk
- Multipliers in Personal Injury Actions - (2000,1999,1998) - Legal Services Agency Day Conference on Update on Personal Injury Law
- Presentation: Psychological Injury and the Law (2007)
- Medico-legal report writing and Giving Evidence in Court Medical Education - for Doctors (2007)
- Presentation: Medical Negligence - Day Conference for Morton Fraser (2006)
- Presentation: Cerebral Palsy and Brain Injury Claims - Legal Services Agency (2005)
- Quantification of claims for Psychological Injury - Legal Services Agency (2004 and 2005)
- Presentation: Medical Negligence - Quantification of Claims and Update - The Law Society (2004)
- The Dentist and the Law - Royal Odonto - Chirurgical Society of Scotland (3 separate lectures in Glasgow, Edinburgh and Dundee)
- Cross examination of witnesses - with Charles Hennessy - Medical Negligence Scottish Young Lawyers
- Human Rights and Medical Law - Central Law Training (2002)
- Accidents to Children - Central Law Training and Glasgow Graduate School of Law (2002)
- Negotiation in Personal Injury Actions - Scottish Young Lawyers Conference (with Professor C Hennessy, Solicitor Advocate)
- Limitation in Personal Injury actions- Legal Services Agency (with Hugh Olson, Advocate) - October 2001
- Expert witnesses - SLYA October 2001 Day Conference
- Preparing a Medical Negligence Action for Court - Scottish Young Lawyers Conference
- Children in Reparation Actions - Central Law Training - Fifth Annual Reparation Conference - November 2001
- Conduct of a Civil Proof- Scottish Young Lawyers Annual Conference (with Professor C Hennessy, Solicitor Advocate) January 2000
- Medical Law and Human Rights - Scottish Young Lawyers Conference October 2000
- Preparation of a Reparation Action - Scottish Young Lawyers Annual Conference January 1999
- Issues of Evidence in Personal Injury Actions - Glasgow Bar Association January 1998
- Preparation of a Medical Negligence Action - Glasgow Bar Association
- Fatal Accident Inquiries - SSC February 1996
- Preparing and Conducting a Medical Negligence Action - Greens in conjunction with Strathclyde University October 1995
- Psychological Injury and Stress at Work Claims - Legal Services Agency Conference
- Preparing and Conducting a Medical Negligence Action - Greens in conjunction with Strathclyde University October 1995
- Psychological Injury and Stress at Work Claims - Legal Services Agency Conference
- Training Course for GP experts on giving evidence in court - with John Sturrock Q.C.

James Rowley KC

Called: 1987

Silk Date: 2006



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James.Rowley@byromstreet.com



Practice Overview

Chambers & Partners 2024 (PI) - a Band 1 Silk

James Rowley KC maintains a balanced practice representing both claimants and defendants in catastrophic injury cases. He deals with claims of the utmost severity, including amputations along with brain and spinal injuries. He is lauded by sources for his attention to detail and understanding of complex quantum issues.

"James is very intelligent and knows his stuff. He is a very formidable opponent who is a reliable advocate."

"James has excellent attention to detail."

"James is a good barrister because he is effective and works well to targets."

Chambers & Partners 2024 (Clin Neg) - a Band 1 Silk

James Rowley KC is well known as a leading expert on quantum issues in high-value brain injury cases. He frequently represents child claimants at all stages of complex clinical negligence cases arising from negligence at birth. He has further proven strength in delayed diagnosis of cancer and meningitis cases.

"James is incredibly talented. He has an unbelievable depth of knowledge and exceptional negotiation skills."

"He's very sharp and in command of the detail."

PRACTICE AREAS

Personal Injury

Clinical Negligence

Mediation as an expert/evaluative mediator in the above fields

APPOINTMENTS

Hardwicke Scholar of Lincoln's Inn

Counsel to the Alder Hey Inquiry (2000)

Recorder of the Crown and County Courts (2003-2015)

Chairman of the Personal Injuries Bar Association (2010-12)

ASSOCIATIONS

Personal Injuries Bar Association

Professional Negligence Bar Association
Member of the London School of Mediation
Registered Mediator of the Civil Mediation Council

AUTHORSHIPS

Serious Personal Injury Litigation - Quantum updated to 2024 [Buy Now]
A PIBA Guide to Pension Loss Calculation
Facts & Figures: sections on Care and Pensions

PERSONAL INFORMATION

Born in 1964 in North Staffs., educated at Stonyhurst and Emmanuel College, Cambridge, James studied Classics (MA) before converting to Law. He lives in the Cheshire countryside with his wife and has 3 grown up sons. He plays cricket but increasingly poorly. Otherwise, he describes himself as an armchair sportsman, gardener and cook, and keeps a wine cellar.

Personal Injury

James Rowley specialises in Personal Injuries litigation of maximum severity or special interest. He works for claimants and insurers. His breadth of experience allows him to cover the entire spectrum of cases. An understanding of medical/expert evidence, numeracy and attention to detail in paperwork maximizes his client's position.

James has covered cases on liability involving almost every conceivable type of personal injury claim including:

- accidents on the roads
- accidents on construction sites, in factories and involving occupiers' liability
- military accidents in training (including SAS selection in the Brecon Beacons) and disasters in Iraq and Afghanistan
- sporting injuries
- injuries arising out of faulty consumer goods

On the quantification and settlement of claims, James takes an active role in choosing and leading the team; he drafts detailed Statements of Case, Schedules and Counter Schedules himself in heavy actions; he knows the ins and outs of early pathfinder JSMs and how to guide a case towards its best tactical resolution. He has particular experience in cases of:

- Serious brain injuries and where the issue of capacity is borderline
- Spinal injuries at all levels
- Amputee cases at all levels, including bilateral amputation
- Psychiatric injury and especially PTSD
- PPOs for overseas residents including Brazil and Australia
- Reverse indemnity agreements / abatement clauses from PPO orders in respect of statutory funding to the benefit of both claimant and insurer
- Reduced expectation of life and the medical literature associated with its evaluation

REPORTED CASES

Hammond v Gibbon [2023] EWHC 2550 (KB)

There was no liability on a motorist when a 4 1/2 year old child ran from behind a parked vehicle, in her nearside peripheral vision, into collision with the front nearside corner of her Freelander vehicle. (Represented the successful motorist.) [Click to read the article "Hammond v Gibbon - A case of eccentricity"]

Moreira v Moran (t/a ACH Joinery and Building Contractors [2021] EWHC 1800 (QB)

Two self-employed builders were equally liable for the brain injury sustained by a labourer who fell from a mezzanine onto a concrete floor. Their negligence in failing to provide a safe place and system of work had caused his accident. In the circumstances, the owner of the premises had not breached its common duty of care under the Occupiers' Liability Act 1957 s.2 and was not liable. (Represented the successful occupier of the premises.)

Faisal v Younis & Active Brands [2018] EWHC 1111 (QB)

On appeal in a case where a two-year-old child, accompanying his mother to a convenience store, had been able to open a bottle of caustic soda with faulty top and ingest from it, the Recorder had been entitled to apportion responsibility on the basis that the bottle manufacturer should bear two-thirds and the shopkeeper one-third for displaying hazardous goods at pushchair height. (Represented the successful manufacturer, having admitted liability, in gaining contribution from the shopkeeper.)

Dunhill v Burgin [2014] 1 WLR 933, [2012] EWHC 3163 (QB), [2012] EWCA Civ 397, [2011] EWHC 464 (QB)

A litigant's capacity to conduct proceedings was to be judged on the basis of the claim which she actually had, not on the basis of the claim as formulated by her lawyers. CPR Pt 21 invalidated a consent judgment involving a protected party where it had been reached without the appointment of a litigation friend and court approval, even where the individual's lack of capacity had been unknown at the time of the compromise.

"There was much more to the defendant's arguments than this, and they were made with conspicuous learning and skill. It was certainly not counsel's fault that we rejected them." - Baroness Hale, after summarizing James' arguments before the Supreme Court, in the Peter Taylor Memorial Lecture 2014 to the Professional Negligence Bar Association.

Scott and Evans v Griffiths 2014 WL 16579 - A motorist had taken the precautions a reasonable motorist would have taken in the circumstances before his car struck a pedestrian who had stepped on to the carriageway. He had reacted to the presence of the pedestrian at the side of the road by taking his foot off the accelerator and steering towards the centre of the road; there had been insufficient time to brake and, consequently, no breach of his duty of care in failing to brake. (Represented the successful motorist.)

Threlfall v Hull City Council [2011] ICR 209 - The Court of Appeal gave guidance about the correct approach to the Personal Protective Equipment at Work Regulations 1992 reg.4 and reg.6, with particular emphasis on how to determine whether personal protective equipment was "suitable". (Represented the claimant on the successful appeal.)

Stanley v Bryn Close t/a Armthorpe Moto Parc [2009] EWHC 2849 (QB) - The court determined that a motor track operator was both vicariously and directly liable for the actions of one of its track marshals, following a collision between two motorcyclists, as it had failed to employ and train the marshals properly. (Represented the successful claimant.)

The Kajaki Dam Disaster v MoD (2008) - Liability compromised on confidential terms between a section of 3PARA losing limbs and life in a minefield in Afghanistan in 2006. Chinook rescue helicopter attempted to land, the downwash causing further detonations. Issues on liability involving combat immunity and the duty of care; resources; practicalities; military planning and deployment of proper aircraft in Medevac. (Represented the family of Cpl. Mark Wright GC at the Inquest, when he questioned the Surgeon General on the lack of provision of

suitable Medevac and rescue helicopters, and the survivors on liability issues in the civil actions.)

Samantha Roberts v MoD (2006) - Liability and quantum compromised on confidential terms. Sgt Roberts, the first British casualty of the 2nd Gulf War, was shot and killed by his own side having given up his body armour, which was in short supply and would have saved his life. Issues involving combat immunity and the duty of care; political constraints on the open purchase of equipment in the run up to the declaration of hostilities while UN Inspection Teams were still in Iraq; deficiencies in training in the firing of the coaxial machine gun of the Challenger 2 tank. (Represented the Widow at the inquest, where he unlocked the cooperation of the MoD in providing sensitive evidence by applying for a witness summons in respect of the Secretary of State for Defence, and in the civil action.)

In the PTSD Group Actions - Multiple Claimants v MOD [2003] EWHC 1134 (QB) - Ministry not generally in systemic breach in the past when the risk of chronic/delayed PTSD was thought to be low. Ministry immune under Statute prior to 1987 and with continuing Common Law combat immunity as widely defined. However, 4 of the 14 Lead Claimants established liability (subject to statutory immunity in early cases) for *Bolam* breaches in their care after combat. CBT and drug therapy found to be effective in the treatment of PTSD. (Senior Junior for the claimants, who were unsuccessful on generic breach issues but successful on generic causation issues.)

Craven v John Riches et al and Knockhill Racing Circuit [2001] EWCA CIV 375 - On a track day, the respondents had been negligent by allowing riders of motorcycles travelling at high speeds to be on the race track at the same time as riders travelling at slow speeds. (Junior for the claimant, who lost at first instance but succeeded on appeal.)

Jebson v MOD [2000] 1 W.L.R. 2055, I.C.R. 1220 CA - "Ministry liable for injury after night out" - where an obligation of care was implied or assumed in respect of a person who was likely to be drunk, that liability could not be avoided because the person was inebriated. (Represented the claimant, who lost at first instance but succeeded on appeal.)

SAMPLE CURRENT CASES

Too numerous to specify. Relevant cases will be supplied on specific request.

Clinical Negligence

James has covered all the common sorts of case on liability over the years and many unusual ones. He has particular experience in the interpretation of CTG traces (applying the NICE Guidelines of 2001, 2007, 2014, 2017 and 2022) and cases of infant meningitis and septicaemia. An ability to find and focus on the key factors within the unique matrix of each case is what counts; but his experience includes:

- Obstetric/midwifery and neo-natal mismanagement

Failure in CTG monitoring, IUGR, excessive use of Syntocinon, cases of twin and home delivery, amniotic fluid embolism, premature labour, cord prolapse, uterine rupture and shoulder dystocia, perineal tears, HIE, hypoglycaemia and polycythaemia, persistent pulmonary hypertension, vitamin K deficiency and GBS infection in the new-born, retinopathy of prematurity, achondroplasia / foramen magnum decompression, neonatal balloon valvuloplasty for valve stenosis

- Delay in diagnosis

Premature precipitate labour, cancers, meningitis, subarachnoid haemorrhage, brain abscess, tetanus, diabetic foot, abdominal aortic aneurysm, cervical myelopathy, spinal extradural haematoma leading to paralysis.

- Cardio-vascular events

Cardiac disease, stroke, mismanagement of hypertension, peripheral arterial and vascular disease, DVT, delay in relief of tension pneumothoraces.

- Generally

Minimally-invasive (keyhole) surgery, ERCP including torn oesophagus, gastro-enterological and colo-rectal disease, acute pancreatitis and hepato-biliary tract disease; gastrectomy and vagotomy; radiation enteritis; mismanagement of schizophrenia.

James prefers to draft his own Statements of Case - usually for disclosure during the pre-action protocol - to refine the issues at an early stage. Following agreement/ determination of liability, he is active in the preparation for and negotiation of claims to assess damages.

REPORTED CASES

Beech v Timney [2013] EWHC 2345 (QB) - A GPs record of low/normal blood pressure (110/80) in a 34-year old man was not inaccurate or negligently obtained. Even if the BP had been $\geq 180/110$, the absence of antihypertensive treatment, stepping up gradually over 6 months prior to a haemorrhagic stroke, made no difference as it would have happened anyway. Efficacy of treatment of high blood pressure considered. (Represented the successful GP.)

Spencer v NHS North West [2012] EWHC 2142 (QB) - A health authority had not been negligent in its treatment of a baby who had developed Group B haemolytic streptococcus shortly after her birth, causing irreversible brain damage. There was no basis for finding that no reasonable midwife would have acted as had the midwife in the case, and the fact that the illness had been preventable did not mean that it had been caused by negligence on the part of the health authority. (Represented the unsuccessful claimant.)

Parkes v Mann [2011] EWHC 1724 (QB) - No liability on a GP for failing to refer to hospital a woman in fact in *premature* labour but presenting with slow, almost silent dilation of the cervix (similar to common discomfort in pregnancy) rather than contractions. *Precipitate* delivery was not reasonably foreseeable: a GP could reasonably give advice to seek further assistance if there was some development. (Represented the successful GP.)

Morris v Blackpool Victoria Hospital NHS Trust [2003] EWHC 1744 (QB) and [2004] EWCA Civ 1294. (Junior for the unsuccessful claimant.)

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Directory Comments

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"James is a real tour de force."

"He is a heavyweight silk of the finest quality."

"James is a master in his field who could write the book on the correct quantification of damages."

"He is hugely respected on both sides."

Chambers & Partners 2023 (P I) - Band 1

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"His experience in dealing with quantum in maximum-value claims is unsurpassed."

"James is a brilliant leader in terms of guidance, input and feedback."

"James is a master of detail."

Chambers & Partners 2023 (Clin Neg) - Band 1

Chambers & Partners Directories 2023 say this:

"James Rowley QC (a Band 1 Silk in both Clinical Negligence and Personal Injury sections each year) ...

Clinical Negligence

2023

- "James Rowley KC is well known as a leading expert on quantum issues in high-value brain injury cases. He frequently represents child claimants at all stages of complex clinical negligence cases arising from negligence at birth. He has further proven strength in delayed diagnosis of cancer and meningitis cases."

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Personal Injury

"[He] maintains a balanced practice representing both claimants and defendants in catastrophic injury cases. He deals with claims of the utmost severity, including amputations along with brain and spinal injuries. He is lauded by sources for his attention to detail and understanding of complex quantum issues." (2021-23)

2023

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Lectures, Seminars and Publications

Books

PNBA *Facts & Figures* (annually) - General Editor and Author of Chapters K1: Care and attendance and H1: Notes on Pension Losses

Serious Personal Injury Litigation - Quantum Updated to 2024: Author

"... a meticulous and masterful work ..." the Honourable Mr Justice Turner (in the Foreword)

A PIBA Guide to Pension Loss Calculation (2020): Main Author

"This publication calls for compliments, but I am not being merely complimentary in suggesting it will become indispensable" the Right Honourable Lord Justice Irwin (in the Foreword)

Articles

James has published articles on the themes in the above book titles for many years and in addition:

Periodical Payments Orders - Useful or useless? Kemp incorporating Quantum 1/2007

Combat Immunity and the Duty of Care [2004] JPIL 280

Seminars

James speaks regularly (to both sides): on the quantification of damages in serious cases; in Schedules Masterclasses, drafting tricky heads of damage on screen; on CTG interpretation for lawyers in obstetric claims with the evolving NICE Guidance.