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Content update: August 2024

Highlights:

- ▶ Cases roundup
- ▶ Introduction to our experts
- ▶ The Infected Blood Inquiry, Sir Brian Langstaff has published his final report and presented its findings to the public – *Personal Injury Compensation* reviews the report

Medical on i-law.com

Written by experts in medical law and clinical negligence, Medical on i-law.com is the leading provider of legal know-how on major medico-legal cases.

Medical on i-law.com features *Medical Law Reports*, our exclusive series of reports which focus on the most influential appellate and ground-breaking first instance court decisions.

Recently published in *Medical Law Reports*

Lukes v Kent and Medway NHS and Social Care Partnership Trust and Another

[2024] Med LR 233; [2024] EWHC 753 (KB)
Strike out – Summary judgment – Personal Injury claim – Mental/psychiatric illness – Mental health assessment whilst in custody – Duty of care owed by police – Duty of care owed by community mental health services – Causation – Detention – Risk assessment – Self-harm.

This case is likely to be of interest to practitioners in two main respects. First, it serves as a useful reminder that a strike-out application can be made under CPR r 3.4(2)(a) where there are no reasonable grounds to bring the claim because it is certain to fail on the facts. Secondly, paras 116 to 121 of the judgment offer an excellent and thorough review of the authorities on summary judgment applicable in this area.

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Wessex Fertility Ltd v University Southampton Hospital NHS Foundation Trust (Human Fertilisation and Embryology Authority and Donor Conception Network, Interested Parties)

[2024] Med LR 273; [2024] EWHC 587 (Fam)
Consent – Egg donor – Genetic testing – DNA sample – Processing personal data – Justification – Interference – Right to respect for private and family life – Withholding information – Declaratory relief.

In this interesting and unusual case the Family Court granted a novel declaration in the context of a request by a fertility clinic, supported by an NHS Trust, to contact an egg donor, seemingly many years after the donation, to seek her agreement to undergo genetic testing. While the law is complex, the court appeared to have little hesitation in granting the relief sought.

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Professional Standards Authority for Health and Social Care v General Dental Council and Patel

[2024] Med LR 205; [2024] EWHC 243 (Admin)
General Dental Council – Fitness to practise – Conviction for causing death by careless driving – Reprimand – Insufficient sanction.

The second respondent, a dentist registered with the General Dental Council (“GDC”), was convicted of causing death by careless driving at Manchester Crown Court. He was sentenced to 15 months’ imprisonment suspended for two years with 280 hours of unpaid work and disqualified from driving for three years. A Professional Conduct Committee of the GDC found the conviction proved together with the fact that he had misled the GDC by failing to inform them at any time before his conviction that he had been charged with the criminal offence.

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“I’d be very stuck without the Reports.”

University Hospital Southampton NHS Foundation Trust

Chilton v Payne

[2024] Med LR 183; [2024] EWHC 451 (Admin)
Clinical negligence – Breach of duty – Expert evidence – Appeal – Private surgeon – Scope of duty.

This High Court appeal is useful for practitioners considering the duties owed by private medical practitioners in relation to patient follow-up and review. The judgment is also a good reminder to practitioners of the need to be concise when constructing grounds of appeal and to ensure that the grounds advanced do not overlap significantly.

www.i-law.com/ilaw/doc/view.htm?id=439154

Published in *Medical Law Reports Plus*

Medical Law Reports Plus is our online-first service, ensuring speedy access to expert commentary on the latest judgments.

Aga v General Dental Council [2024] Med LR Plus 16
General Dental Council – Appeal against sanction – Immediate orders for suspension – Commencement date of period of substantive suspension where immediate order made.

www.i-law.com/ilaw/doc/view.htm?id=439779

Davies v Bridgend County Borough Council, Network Rail Infrastructure Ltd, Intervener [2024] Med LR Plus 17
Nuisance – Breach of duty – Factual causation – Application of “but for” test – Damages – Diminution in value – Apportionment.

www.i-law.com/ilaw/doc/view.htm?id=439777

R (Parkin) v His Majesty’s Assistant Coroner For Inner London (East) (1) London Borough Of Havering (2) North East London NHS Foundation Trust, Interested Parties [2024] Med LR Plus 18
Inquest – Death of elderly woman resulting from smoke inhalation – Involvement of public authorities prior to death – Known risk factors for a fire – Whether article 2 required the coroner to investigate the wider circumstances of the death.

www.i-law.com/ilaw/doc/view.htm?id=439778

Thorp and Others v Mehta and Another [2024] Med LR Plus 19
Clinical negligence – Breach of duty – Bolam/Bolitho – Discussion of treatment options – Montgomery – Causation.

www.i-law.com/ilaw/doc/view.htm?id=439776

Introduction to our experts

Medical Law Reports is written and compiled by experts in medical law and clinical negligence. Their industry knowledge and familiarity with key issues and current trends ensures *Medical Law Reports* is an essential source of insight and information.

General Editor

Ranald Davidson, Barrister. Ranald has practised for more than 20 years in various areas of medical and personal injury law with an emphasis now on clinical negligence, professional regulatory and inquest work.

Consultant Editors

Sir Robert Francis KC. Robert's practice encompasses clinical negligence, medical ethics, inquiries, professional discipline and regulation, medical employment issues and public law.

Jonathan Holl-Allen KC. In clinical negligence cases Jonathan acts on behalf of all the major medical defence organisations and the NHSLA and on behalf of the practitioner in discipline cases.

Contributors

James Watson KC. James undertakes work with an emphasis on clinical negligence and police issues, professional disciplinary and regulatory work.

Adrian Hopkins KC. Adrian has over 30 years' experience in medical law, ranging from clinical negligence, professional discipline and regulation, to medical ethics and healthcare.

Michael Horne KC. Michael specialises in healthcare law; primarily in clinical negligence.

Katie Gollop KC. Well known for her ethical work, many of Katie's serious medical treatment cases in the Court of Protection attract national news coverage.

Dr Simon Fox KC. Simon is a medically qualified specialist clinical negligence silk with 25 years' experience.

David Morris, Barrister. David specialises in the defence of healthcare professionals and hospital trusts.

Amy Street, Barrister. Amy specialises in cases involving novel or complex points of law. She practices in inquests and coronial law and is an Assistant Coroner.

Conrad Hallin, Barrister. Conrad offers significant expertise across a range of fields, with a focus on Court of Protection and clinical negligence.

Emma Sutton, Barrister. Emma has considerable experience in constitutional law and is recognised as a leading junior in public & administrative law, Court of Protection, education and inquest and inquiries work.

Susanna Rickard, Barrister. Susanna's cases involve inquests, the police, clinicians, medical ethics, mental health trusts, NHS bodies or commissioning groups and local authorities.

Clare Hennessy, Barrister. Clare began her career as a criminal barrister and brings her advocacy experience to her work in clinical negligence, police and professional discipline cases.

Pravin Fernando, Barrister. Pravin provides expertise in all Chambers' core areas of practice and is highly regarded by instructing solicitors.

Jemma Lee, Barrister. Jemma has a broad practice across a range of healthcare issues and has a strong practice in all forms of clinical negligence, inquests, and Court of Protection work.

Aaron Rathmell, Barrister. Aaron has a practice in public law, human rights, inquiries, civil claims and discrimination law, with particular experience in the policing and medical sectors.

Rachael Gourley, Barrister. Rachael's practice covers Court of Protection, inquests, clinical negligence, professional discipline, public law and police misconduct.

The Infected Blood Inquiry

Sir Brian Langstaff has published his final report into the UK contaminated blood scandal and presented its findings to the public. Analysis of the scandal called "the worst treatment disaster in the history of the NHS" is available now in [Personal Injury Compensation](#)

Sir Brian Langstaff, Chairman of the Infected Blood Inquiry, the largest public inquiry in the UK concerning personal injuries, has published his final report. He presented his findings to the public after almost six years of hearing evidence from survivors, families, health officials, civil servants, scientists and doctors. The Infected Blood Inquiry was established as an independent public statutory inquiry to identify and examine the circumstances in which men, women and children treated by the NHS since it was founded in 1948, were given infected blood and infected blood products.

Two interim reports had been published within the past two years. The first recommended interim compensation payments to infected patients in July 2022, and the second, in April 2023 recommended that interim payments be made to the bereaved and requested that the government set up a full compensation scheme by the end of the same year. In his final report, the inquiry chairman criticised the lack of meaningful response to the interim reports, particularly in respect of the delays and lack of progress on compensation payments.

Central to the inquiry were patients who were treated with blood or blood products and tissue from the NHS since 1948, many of whom (particularly those treated between 1970 and 1998), died or suffered not as a direct result of their underlying conditions or illnesses, but as a result of the treatment itself. The suffering of the patients themselves extended to their relatives and others close to them, and more than 4,000 statements were received in the course of the inquiry.

It is known that as many as 30,000 people were given contaminated blood products and tissue from the 1970s to the 1990s, and that around 3,000 people have died so far after contracting human immunodeficiency virus (HIV) and hepatitis. Prime Minister Rishi Sunak apologised for the role that the state had played in the tragedy and described it as "the worst treatment scandal in NHS history, which had resulted from 'moral failure' at the heart of our national life" in which doctors, civil servants and ministers had put their own reputations above the safety of patients.

The report is very comprehensive and is presented in seven separate volumes. In addition, a document containing details of how compensation would be paid was published separately the following day. Both reports are available online at www.gov.uk/official-documents.

The level of detail in the report is impressive, and certain sections will be of particular relevance to some individuals and organisations.

Available now in *Personal Injury Compensation* (2024) 40 5 PIC 1 www.i-law.com/ilaw/doc/view.htm?id=439396

2,387

Number of articles published in
Personal Injury Compensation

Figures accurate at 11 July 2024

Most read Medical Law Reports in 2023 – Part 2

This second instalment of the most read Reports in 2023 (for Part 1 see the April 2024 content update) highlights the scope of content covered in the Reports. Medical Law Reports includes must-see court decisions, and provides keywords and valuable analysis to help understand the implications of each judgment.

Tan v East London and City HA [1999] Lloyd's Rep Med 389
In utero death — Stillbirth — Psychiatric injury to father — Nature of the shocking event — Aftermath — Limitation — Section 33, Limitation Act 1980.

This case is an interesting example of just how difficult it is to escape the consequences of the control mechanisms set out in *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 AC 310; [1991] 4 All ER 907 for the recovery of damages by secondary parties for psychiatric injury.

www.i-law.com/ilaw/doc/view.htm?id=304813

Goodwill v British Pregnancy Advice Service (1996) 7 Med LR 129
Negligence — Duty of care — Advisory service — Duty to patient's sexual partner — Vasectomy performed on M in November 1984 — In April 1985 defendants advised M that vasectomy successful — Plaintiff commenced sexual relationship with M in March 1988 — Plaintiff advised of remote chance of conception despite partner's vasectomy — No contraceptive precautions taken — Plaintiff becoming pregnant.

This was the plaintiff's action in negligence against defendants who had advised plaintiff's sexual partner that vasectomy was successful, dismissed on grounds that pleadings: (1) disclosed no reasonable cause of action; (2) were frivolous or vexatious or an abuse of process.

www.i-law.com/ilaw/doc/view.htm?id=304961

Marriott v West Midlands Health Authority
[1999] Lloyd's Rep Med 23

Head injury — Extra-dural haematoma — Admitted to hospital — Discharged — Missed diagnosis — GP examination post-discharge — Failure to heed history and complaints — Failure to refer back to hospital — Whether GP negligent — Body of professional opinion supports not referring back to hospital — Whether that body of professional opinion is reasonable.

In these proceedings, through Mrs Marriott his next friend, the plaintiff claims damages against the Regional Health Authority. His writ was issued on 30 September 1987. He claimed he ought not to have been discharged from hospital after his original admission and that, if he had been kept under observation in hospital as he ought to have been and not discharged too soon, the fact that his condition was not improving would have alerted competent doctors to the seriousness of his injury.

www.i-law.com/ilaw/doc/view.htm?id=304853

Thompson v Blake-Jones [1998] Lloyd's Rep Med 187

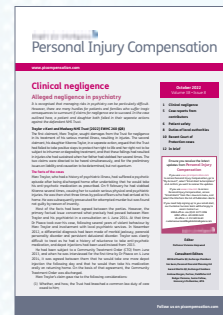
Professional liability — General practitioner — Vaccination — Contra-indications — Advice to parents of small child — Foreseeability — Doctor advising against vaccinations because of reasonable belief that child had suffered seizure — Alternative immunisation advised against whooping cough.

Where advice was given by a skilled adviser to enable a person he was advising to reach informed decision, it must be shown that adviser could at least foresee that from its nature and circumstances in which it was given his advice might have significant influence when person advised took decision particularly where both parties know that one or more advisers would subsequently be consulted.

www.i-law.com/ilaw/doc/view.htm?id=304896

Product focus: Personal Injury Compensation

In each content update we focus on new articles available in our medical case law resource, Personal Injury Compensation.



Consent to treatment

Parsons v Isle of Wight NHS Trust [2023] EWHC 3115 (KB); (2024) 40 4 PIC 1

The High Court has recently considered a consent case involving anaesthesia in which there were claims for both trespass and negligence. Ritchie J, the High Court judge who had decided *CNZ v Royal Bath Hospitals NHS Foundation Trust* [2023] Med LR 59, heard the case, and made several observations concerning the duty of candour and the role and responsibilities of doctors.

www.i-law.com/ilaw/doc/view.htm?id=438985

Holism over aggregation in contributory negligence

Owens v Lewis [2024] EWHC 609 (KB); (2024) 40 4 PIC 10

Allegations of contributory negligence by the claimant were raised by the defendant. The judge held that he would not classify each aspect of “contributory negligence” to be adjudicated separately, rather that the actions of the claimant would be converged into a single “incorrect decision”. A “holistic” approach should be applied in the deduction process: that is, a single bad decision should be judged rather than focusing on individual components of what was “a bad decision” on the claimant’s part.

www.i-law.com/ilaw/doc/view.htm?id=438984

Wound management required for patient with schizophrenia

King's College Hospital NHS Foundation Trust v South London and Maudsley NHS Foundation Trust and GF [2024] EWCOP 20; (2024) 40 4 PIC 5

When a patient has psychosis, and also requires surgery as soon as possible, the only option can sometimes be to apply to the Court of Protection. In this case the applicant Trust was responsible for the physical care of GF, while the respondent Trust had responsibility for his mental health.

www.i-law.com/ilaw/doc/view.htm?id=438983

Personal Injury Compensation includes carefully chosen material edited by Professor Vivienne Harpwood, Emerita Professor of Law at Cardiff University. It focuses on key personal injury and clinical negligence cases from the courts of England and Wales, and brings you timely, authoritative commentaries on the latest sector developments. It specialises in coverage of medical law developments, and brings coverage of case law of interest to medical law professionals, associations, regulatory bodies and insurance companies. Access it on i-law.com and at www.picompensation.com

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