



Simon Earlam

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Call 1975

Personal

I was born in 1950 in Frodsham, Cheshire, where my father was a GP for more than 50 years, so I learned what good doctoring was about. After reading for two law degrees at Oxford and being called to the Bar, I joined Exchange Chambers in Liverpool in 1975. It is now exciting to be a member of a successful set of Chambers, which is also well established in Manchester.

I now live on the Wirral with my wife and two young daughters who dote on a son by a previous marriage. Although my present physique may suggest otherwise, I was a keen sportsman at school, participating in all the main sports. At Stowe, I played in the 1st XI hockey for 2 years and the school golf team for 4 years before moving on to win 3 golf Blues at Oxford. If you are interested in meaningless statistics, I am the coequal third most successful golf Blue of the 20th Century since records began in the 1920's, being beaten in particular by the Edwardian genius C.B. Fry who also, unlike myself, played cricket for England!

I fear statistics flatter to deceive, and these days play whenever time allows at Royal Liverpool or Delamere Forest, where I still hold a single figure handicap.

I am still generally interested in all sport, hating little more than watching England lose at cricket. In the winter months, I am a somewhat vocal Everton supporter. My more soothing pastimes include walking in the Cumbrian Fells, travelling and visiting the theatre whenever possible, and enjoying a fine glass in the evening, probably too often, but rarely without my wife to share the experience!

EDUCATION

Stowe School, Buckingham; Mansfield College, Oxford

Degrees: MA (Hons) Jurisprudence; B.C.L.

MEMBERSHIPS

1. Gray's Inn
2. Northern Circuit
3. Personal Injuries Bar Association
4. Professional Negligence Bar Association
5. Northern Circuit Medical Law Association

APPOINTMENTS

Recorder, sitting in the Crown and County Courts.

Practice

As with most provincial practitioners, in the past, I was a generalist common lawyer until 15 years ago which has stood me in good stead as an advocate. I am proud to have been one of six candidates out of several hundred to have been appointed to the Attorney General's List. Over the last 15 years, I have developed specialist expertise in the fields of personal injury and clinical negligence, practise also in the area of professional negligence which is largely, but not exclusively, concerned with the conduct of such litigation by Solicitors, and am increasingly being asked to advise in areas in which medical issues arise, e.g. eligibility for benefit under a contract of insurance.

I think it is very important that real specialist expertise is available on Circuit in these areas, and believe I have the hard forensic experience and knowledge to provide it, as well as a genuine commitment, with my caring family background, to helping the disabled, whether by accident or medical mishap.

Steeped in the best medical tradition, I find it greatly helpful to be instinctively attuned to medical issues.

In 2003, I was asked to look at 30 cases of potential clinical negligence on a CFA basis. On the basis of a questionnaire and GP notes but with no medical reports, I managed to select 6 cases, of which 4 have succeeded to date. There is no room for complacency, however, and I constantly seek to improve my medico-legal knowledge through my membership of the relevant Specialist Bar and Circuit Associations, attending residential seminars whenever possible, which is usually once a year, topped up by lectures. Because of my Recordership, I do not belong to APIL or FOIL.

I believe in an ethical and judicious approach to clinical negligence litigation. Despite my family medical background, I appear mainly for Claimants but continue to believe it is healthy and advantageous to appear for both sides, through this is regrettably not always a view shared by some Trust Solicitors!

I try to be approachable without losing my professional objectivity, and believe that thorough preparation and command of detail, allied with an innate understanding of medical issues, is fundamental to increasing the prospect of successful outcomes.

I have a very wide experience in all my main areas of expertise: personal injury, clinical negligence and professional negligence.

A. PERSONAL INJURY

The following are some examples of the types of cases I have dealt with:

- i. Traumatic head injury, involving brain injury of the utmost severity to moderate brain injury.
- ii. Spinal injury causing tetraplegia, paraplegia, diplegia and mild hemiparesis, and cauda equina syndrome.
- iii. Traumatic amputation (e.g. of a trawlerman's leg by a hawser whilst at sea, or of a worker's fingers in a saw mill); also surgical amputations following catastrophic orthopaedic injuries.
- iv. All manner of orthopaedic injury.
- v. Soft tissue injury to the spine and shoulders.
- vi. Neurological damage, including brachial plexus injury.

- vii. Burns and scarring.
- viii. Carbon monoxide and industrial poisoning (e.g. by Maleic Anhydride).
- ix. Asbestos/mesothelioma, (e.g. in ladders or shipwrights).
- x. Psychiatric injury, including PTSD and chronic pain syndrome.
- xi. Fibromyalgia and chronic fatigue syndrome.
- xii. Failure to diagnose dyslexia and genetic disorders like XXX syndrome.

I am well used to formulating claims for damages from the modest to the most serious and complex cases in which millions are claimed, which may involve intricate questions of partnership, small companies, discretionary trusts and even those with foreign Claimants who required to claim tax on their damages in the UK because their damages would be taxed when remitted to their country of domicile (e.g. Australia).

It is in the nature of my practice that I have extensive experience of litigating multiple road traffic accidents, industrial accidents (including docks and mines) and stress and bullying claims at work. Please see Appendix I for details of some cases in which I have been involved since 2002.

B. CLINICAL NEGLIGENCE

Generally regarded as one of the most experienced practitioners on Circuit, I have very extensive experience indeed across the whole range of medical disciplines. The claims I have handled successfully vary in complexity and value from a few thousand to a few million pounds. I would like to bring a judicious claim against a hospital which failed to control MRSA on the ward or in theatre if this resulted in death or further damage to a patient because I believe this would force Health Authorities to concentrate more than they have been (at least until recently) on the control of infection.

Since October 2000, I have been involved in eight major athetoid cerebral palsy cases, with several ongoing.

I also have a very wide experience in the areas listed below.

i. Gynaecology

- o shoulder dystocia
- o retinopathy of prematurity
- o urinary incontinence leading to chronic interstitial cystitis
- o failed sterilisation
- o wrongful birth

ii. Diabetology

- o diabetic amputation
- o orthotics

iii. Oncology

- o failure to diagnose melanoma (and other cancers)
- o failure to recognise the effect of radiotherapy used to treat testicular cancer, causing peritonitis through irradiation

iv. Orthopaedics

- o failed osteotomy
- o failed hip and knee joint replacement
- o failure to treat a long bone fracture leading to fat embolisation syndrome and hypoxia

v. Cardiology

- o failure to detect cardiac arrhythmia

vi. Enterology

- o sigmoidoscopy causing bowel perforation
- o incompetent bowel repair by patch instead of Roux-en-Y enteroenterostomy

vii. Plastic Surgery

- o failed rhinoseptoplasty
- o failed breast augmentation
- o failed gynaecomasty (breast reduction for men)

viii. Orthodontics

ix. Brain

- o anaesthetic accidents
- o failure to diagnose cerebral abscess caused via the ethmoidal sinus
- o failure to diagnose extra-dural haematoma
- o failure to diagnose sub-dural haematoma

x. Psychiatry

- o failure to diagnose schizophrenia
- o wrong prescription of addictive drugs like Benzodiazepine, Lithium Carbonate, the anorectic amphetamine Tenuate Dospan and Methadone

xi. Otolaryngology

- o failure to treat aural abscess
- o failed thyroidectomy causing recurrent laryngeal nerve damage and hypothyroidism

I have contributed articles to the APIL news letter, and have lectured at Chambers' seminars in such topics as limitation in clinical negligence and the impact of the Human Rights Act 1998 and the ECHR on personal injury practice.

Please see Appendix II for details of some cases in which I have been involved since 2000.

C. PROFESSIONAL NEGLIGENCE

My expertise in this area is principally in relation to the negligent conduct of PI or clinical negligence litigation by solicitors. See in particular **Williams -v- Fanshaw Porter Hazlehurst (a firm)** [2004] PNL544.

- D issued proceedings against Claimant's GP alleging negligent prescriptions of Femodene (an oral contraceptive) had caused a catastrophic stroke
- D were confused as to the identity of the correct Defendant who issued the prescriptions and failed to realise that the difficulty could be avoided by suing the partnership
- D then discontinued the proceedings in August 1994 without the Claimant's prior consent in the belief that the proceedings could be revived
- Subsequent attempts to revive the proceedings inevitably failed, and new proceedings were struck out
- Proceedings for D's professional negligence were issued in December 2000 and D issued a limitation defence
- Deliberate concealment under S32(1)(b) Limitation Act 1980 raised to defeat limitation defence. The Recorder held that there was no deliberate concealment
- CA allowed the Claimant's appeal:

- i. If the Defendants had made a mistake and made a conscious decision

not to reveal it to the Claimant, this amounted to deliberate concealment even though the Defendant's motive was to avoid embarrassment and they honestly believed (erroneously) their mistake could be rectified

ii. The duty to disclose arose as long as the Defendants' retainer continued

iii. The Defendants had deliberately concealed their mistake until after December 2000 so that the proceedings against the Defendants were not statute barred

APPENDIX I

2002

- i. **Graham -v- Norweb (2002) 5QR6** (Reported in Kemp C2-073/F4-013) (HH Hewitt at Newcastle)
 - o Employee severed electric cable and suffered toxic shock, burns and septicaemia
 - o Employee had pre-existing lipodystrophy (associated with abnormal motor function), diabetes, heart and kidney disease
 - o Very complex medical issues as to extent of exacerbation of preexisting conditions and life expectancy
 - o Established Claimant suffered hypoxic damage causing multifocal myoclonus, and exacerbation especially of mesangiocapillaryglomerulonephritis by correlation of 4 causation experts
 - o Claimant's initial solicitors advised settlement below £80,000
 - o Settled at court for £160,000
- ii. **E -v- MOD**
 - o Serving RAF pilot officer on secondment with Brunei Air Force injured on air-sea rescue exercise in the Gulf
 - o Descent from helicopter into sea alleged to cause whiplash and visual defect
 - o Main issue: was visual defect caused by accident?
 - o Discharged from RAF as unfit to fly, but intended career as commercial pilot
 - o How did visual defect affect prospects in civil aviation?
 - o Loss of chance damages
 - o Settled at trial for £180,000
- iii. **R -v- Wood**
 - o Head-on road smash
 - o Head injury and post concussion syndrome
 - o Reduced earning capacity
 - o Settled for £80,000

2003

- i. **AP -v- Ashtead Plant Ltd**
 - o As the driver of an excavator dismounted, knocked lever causing it to topple over
 - o Issues as to whether Claimant knew machine still running and inadequate training
 - o Severe degloving injury to right lower leg
 - o Permanent pain and disability with residual weakness and reduced earning capacity

- o Settled for £260,000

ii. **Victoria and Christopher Allinson -v- PRs of Jason Irving (dec'd): HCJ**

- o Both Claimants were young children in head-on smash which killed both their maternal grandparents
- o Allied nervous shock claim for their mother
- o **Victoria**

Psychological trauma
Intrabdominal injuries treated by laparotomy
Future risk of abdominal adhesions
Good recovery
Settlement for £40,000 approved

- o **Christopher**

Psychological trauma
Moderate brain injury with permanent intellectual and cognitive deficits
Able to live independently, but earnings potential much reduced
Settlement for £240,000 approved

iii. **PJ -v- Kennedys**

- o Contractor clearing windblown trees off highway after a storm
- o Manual Handling Regulations and inadequate equipment to move trees
- o Prolapsed disc: was this due to breach of duty?
- o Settled for £80,000

2004

i. **R -v- Grant Smoked Foods Ltd**

- o Traumatic amputation of tips of middle and ring fingers at work
- o Cosmetic deformity
- o Reasonable function after surgery
- o Settled for £25,000

ii. **D -v- Drivewright**

- o Middle-aged woman injured during driving lessons on a 500cc motorcycle
- o Novice rider permitted to ride unsupervised in closed area. Liability conceded late
- o Hit wall and flung over handlebars causing multiple hip fractures
- o Permanently disabled
- o Settled for £175,000

iii. **H -v- Irving**

- o Claimant savaged by dog
- o Scarring, fear of dogs and agoraphobia (challenged by video evidence)
- o Successful appeal re: permitted evidence
- o Settled for £50,000

iv. **T -v- Foulsham**

- o Fatal Accident road traffic claim for vulnerable widower
- o Defence of unavoidable accident due to oil on road
- o Accident reconstruction

- o Settled for £50,000 (liability not conceded)
- v. **BPO -v- Brooke and Another**
- o 60 year old farmhand injured in road traffic accident
- o Defence of unavoidable accident due to sun and defective coupling of tractor and trailer
- o Complex issues re: joinder of Defendants
- o Moderate brain injury with subtle, permanent disabilities. Retained job with sympathetic employer and assistance from wife
- o Settled for £90,000

vi. **L -v- Pierse Construction Ltd**

- o Claimant injured when working at a water treatment plant
- o Mechanical digger rolled down a slope unattended and struck Claimant
- o Relatively minor physical injury to shoulder
- o Significant psychiatric injury characterized by PTSD, pain, depression and illness behaviour
- o Settled for £110,000

vii. **McC -v- Enesco European Giftware Ltd**

- o Worker on production line painting models
- o Repetitive strain injury to shoulder
- o Complex ergonomics
- o Settled for £50,000

2005

i. **M -v- Cumbria CC**

- o Dock worker stacking tonne bags of soda ash on quayside from ship's hold
- o Struck on head by bag of soda ash due to operation of crane, banksman and method
- o Complex medical issues as to pathology of neck and back injury
- o Settled just before trial for £25,000

ii. **M -v- Potter**

- o Fatal Accident Claim
- o Driver of forklift truck in scrap metal yard crushed to death when he drove it onto an elevated weighbridge, and it toppled over
- o Issues as to organisation of traffic routes in the scrap yard, to avoid parked vehicle.
- o 3 day inquest established liability
- o Widow died before trial
- o Settled (on a reduced basis) for £32,500

iii. **R -v- B.R. Wharton and Harrison Electricals (Luton CC)**

- o Peripartetic music teacher of French Horn and Senior Member of Bedfordshire Music Service injured in two road accidents in quick succession
- o History of 3 prior accidents and pre-existing neck and back problems
- o Legal issues as to liability of the two Defendants
- o Disagreement between 3 orthopaedic surgeons as to causation and apportionment between Defendants
- o Application of Pearce -v- Linfield [2003] EWCA Civ 647
- o Loss of chance damages for future employment prospects
- o Award after trial: £279,000

APPENDIX II

2000 – 2002

- i. **Wildsmith -v- Berkshire Health Authority**, in which Holland J awarded £5 million after a lengthy trial on the issue whether it would be possible to moderate the neuropsychiatric consequences of the Claimant's severe brain damage by psychotherapy to reduce her need for care.
- ii. **Cowman -v- Newcastle Health Authority**, in which the Defendants insisted the Claimant had no case and the Claimant's own paediatric neurologist and neonatologist initially agreed! My persistence prevailed, the experts changed their minds in conference, the claim eventually settled for 85% liability and £1.6 million on a life expectancy to 30 was approved.
- iii. **Howley -v- West Cumbria Health Authority**, which was settled at trial for £1.4 million because liability was uncertain.
- iv. **Kimberley Nowak -v- West Cumbria Health Authority** (HCJ Carlisle), in which the Claimant suffered mild palsy, had preserved intelligence and was able to work as a travel agent despite having limited ability to communicate: settlement £750,000 approved.
- v. **Katie Jarvis -v- Clwydian Community NHS Trust**. Liability for negligence by the anaesthetist at a day clinic was admitted, but there was a serious dispute as to the appropriate level of care and multipliers. I advised substitution of care experts which enhanced value of the care claim very significantly and increased the value of the claim by in excess of £1.25 million. Case settled at trial for £3.3 million. I gave detailed advice as to Avon CC -v- Hooper undertakings and indemnity.

2003

i. **JH -v- Furness Hospitals NHS Trust**

- o Knee replacement surgery for a physiotherapist who intended to work to 70 complicated by infection
- o Complex evidence from orthopaedic and microbiologist experts on causation and the failure to treat infection
- o Settled for £170,000

ii. **H -v- West Cumbria Health Authority**

- o Claimant fractured left wrist in an accident in the docks
- o Hospital missed fracture on x-ray
- o Fracture not reduced, so proceeded to arthrodesis
- o Permanent disability and reduced earning capacity
- o Settled for £220,000

iii. **SV -v- West Cumbria Health Care NHS Trust**

- o Laceration to the bladder of patient during hysterectomy
- o Failure of surgeon to deflect bladder before dissection of uterus
- o Failure to ensure integrity of bladder per-operatively
- o Development of vesico-vaginal fistula and incontinence
- o Settled for £40,000

iv. **B -v- South Tees Hospitals NHS Trust**

- o Fatal Accident Claim
- o Issues as to multipliers from date of trial: Cookson -v- Knowles
- o Settled for £180,000 on conventional basis

2004

i. N -v- Bradford Teaching Hospital

- o Claimant suffered swan neck deformity of her hand after an attack on her with a scythe in childhood
- o Hand reconstruction failed to give her a prehensile grip because of a failure to apply correct reconstruction techniques
- o Issues as to informed consent: Chester -v- Afshar (2004) 4 A.E.R 587
- o Settled for £5,000

ii. B -v- N. W. Wales NHS Trust

- o Diabetic patient with obvious signs of critical limb ischaemia not referred promptly to a vascular surgeon
- o Delay permitted gangrene to develop
- o Toes amputated
- o Settled for £8,500

iii. M -v- West Cumbria Health Care NHS Trust

- o Saphenous ligation for varicose veins
- o Negligent bandaging after operation
- o Keloid scar to thigh
- o Settled for £9,000

iv. McC -v- Northumbria Health Care NHS Trust

- o District Nurse wishing to become a specialist nurse practitioner broke her leg
- o Hospital failed to achieve reasonable anatomical reduction or to follow up
- o Leg set in valgus deformity
- o Claimant had to give up all work and was seriously disabled
- o Settled shortly before trial for £330,000

v. MK -v- Dewsbury Health Care NHS Trust

- o Young Asian married woman developed an epidural abscess
- o Failure to recognise developing symptoms complicated by cultural difficulties i.e. unwillingness to communicate to the doctors what her symptoms were
- o Failure to proceed to timely decompression of abscess before paraparesis set in
- o Settled for 70% liability and £1.2 million shortly before trial of the assessment of damages

2005

i. L -v- Bro Morgannwg NHS Trust

- o Elderly patient's fractured hip not treated by the correct surgical procedure
- o Treating surgeon used obsolete hemiarthroplasty
- o Two subsequent attempts to reduce hip failed, before full hip replacement
- o Settled for £12,000

ii. WLL -v- West Cumbria Health Authority

- o Elderly man suffered spinal injury in RTA complicated by infection
- o Infection not spotted or treated, leaving him with paraparesis in his legs due to hypoxia
- o Settled shortly before trial for £75,000

iii. MR -v- West Midlands Regional Health Authority

- o I advised against claims for cerebral palsy, but identified possible claim for retinopathy of prematurity
- o Claim for retinopathy of prematurity made on my advice
- o Despite Wilsher -v- East Essex Area Health Authority, (burden of proof not reversed,) settlement for £200,000 achieved and approved

iv. GP -v- North Cumbria Acute Hospitals NHS Trust

- o Heroin addict overprescribed Methadone in hospital following orthopaedic operation
- o Failure to check Claimant's tolerance to opiates or to appreciate the toxicity and half-life of Methadone and its tendency to be stored in tissue
- o Pharmacological issue as to effect of alcohol possibly drunk whilst watching World Cup Final on the ward
- o Serious hypoxic brain damage suffered
- o Judgment for 67% liability

v. M H -v- City Sunderland NHS Trust

- o Severe cerebral palsy
- o Negligent failure by midwives to spot fetal distress and to call paediatrician admitted
- o Dispute as to life expectancy in claim valued at £5.4 million
- o Uncertain impact of Section 2 Damages Act 1992 (periodical payments orders)
- o Quantum assessment awaited

vi. B.C. -v- West Cumbria Health Care NHS Trust

- o Severe cerebral palsy
- o Liability for negligent midwives admitted and judgment entered
- o IP for £100,000 to purchase an adapted vehicle and a year's care pending trial of assessment

vii. K.L. -v- Royal Shrewsbury Hospital Trust

- o Quadriplegic cerebral palsy of dystonic, athetoid type
- o During a trial of labour, the midwives failed to appreciate lack of descent by the fetal head as the cervix dilated due to cephalo-pelvic disproportion (CPD)
- o No sufficient internal pelvic assessment
- o Abnormal FHR and high head above ischial spines indicative of CPD missed
- o Syntocinon prescribed when contra-indicated
- o Liability admitted shortly before trial-Judgment for Claimant entered

viii. K. D. -v- Shropshire Health Authority

- o Severe athetoid cerebral palsy
- o Failed attempts by Neville Barnes and Kiellands forceps
- o Liability admitted. Proceedings issued and Judgment entered after failed mediation

ix. Adrian Bowe -v- Townend [2005] EWHC 198 HCJ, Preston, Grigson J

- o GP negligence due to wrong diagnosis of migraine
- o Claimant suffered catastrophic stroke at the age of 26 due to cardiogenic embolus
- o GP failed to recognise several neurological episodes which were atypical of migraine

- o Emboli caused by combination of patent foramen ovale and inter-atrial septal defects
- o Highly complex cardiological and statistical evidence as to the cause of the embolus
- o Bolitho issue: what would the cardiologist or neurologist, to whom the GP should have referred, have done?
- o Mandatory transoesophageal echocardiogram would have revealed heart defect
- o Causation issue: should aspirin or Warfarin have been prescribed? Would stroke have been avoided?
- o Consent issue as to Warfarin
- o Judgment for Claimant after five day trial

x. **MW -v- North Cumbria Health Authority**

- o Severe cerebral palsy
- o Midwives failed to auscultate fetal heart by Pinnard correctly
- o Alleged failure to heed developing fetal distress
- o Failure to call a paediatrician
- o Issue as to:
 - a. How much pre-partum hypoxia could have been saved
 - b. How much the post-partum failure to resuscitate may have contributed to the outcome
- o If midwives' records were correct, what could have caused sudden collapse of fetal heart?