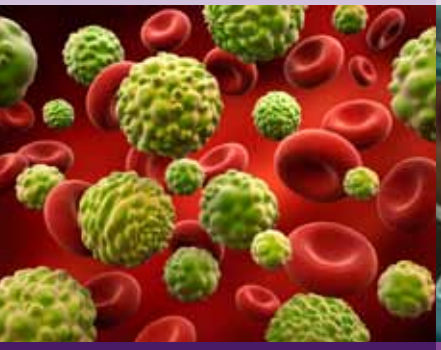
# Medical Negligence Review

Field Fisher Waterhouse

Spring 2012

1. Cancer



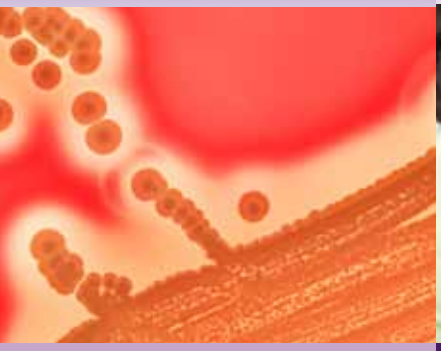
2. Accident and Emergency

## Focus: Meeting needs in Cerebral Palsy claim

3. Midwifery and Obstetric Care

4. Clinical Drugs Trial


5. Hospital Acquired Infection



6. GP and Health Visitor

7. Cardiology

## + Plus

8. Inquest
9. ENT
10. Urology
11. Education

## Who we are...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# Welcome to the Spring 2012 Edition of our Medical Negligence Review

I was recently asked by a journalist what I thought of the Government's proposals to abolish legal aid in clinical negligence claims. I responded that my view was irrelevant.

Over the last six months our clients, whose loved ones had suffered grievous injuries as a result of medical negligence, had been "gobsmacked" when I explained the effects of the Government's plans. The exact outcome of the "reforms" is still not known. One thing is sure, it is very likely that access to justice for victims of medical negligence will be curtailed.

The "double whammy" of the Jackson proposals, knowledge of which has hardly filtered through the legal profession, let alone impacted on our long suffering clients, means that the political and legal battlefields in the clinical negligence arena are far from predictable.

At Field Fisher Waterhouse we promise to keep to our mission statement which is: "Caring for our Clients, Commitment to our Cases, Cutting Edge Expertise". We will do everything in our power to ensure that our clients are not disadvantaged by the upcoming changes.

You will see from our Review that, this year again, our lawyers have been exceptionally busy fighting for justice and compensation on behalf of our clients. Almost all of our cases are conducted either with public funding or on a "No win, no fee" basis and very few clients are asked to contribute towards their own legal costs.
We are proud of our achievements. In the cases detailed here we have recovered more than £27million in damages.

Please feel free to call or email any of our lawyers for advice on any prospective claim or matters concerning treatment in the clinical setting.

I hope you find the review interesting and informative.

**Paul McNeil**

*"FFW has the strength and expertise to handle even the most complex disputes. Clients praise the 'very strong relationships' they forge with the Lawyers with one even stating 'they understood what I meant better than I did!'"*

Chambers, 2011

TOP RANKED CHAMBERS UK 2011 Leading Firm

*"FFW has impressive infrastructure and talented individuals with a diverse practice including claims relating to birth injury, delayed diagnosis, fatalities and accident and emergency medicine"*

The Legal 500, 2011

The LEGAL 500 UNITED KINGDOM LEADING FIRM 2011

# Delay in diagnosis of skin cancer

**Jonathan Zimmern recovered damages for Martin whose wife, Laura, died after a malignant melanoma went undiagnosed for nine months.**

When she died, Laura was aged 55 and had just celebrated her 28th wedding anniversary with Martin. They had two grown up sons together. We successfully argued that had she been diagnosed earlier, she would probably have survived.

In January 2005 Laura noticed a mole on her groin that had increased in size. She visited her GP and explained to him that the mole had recently grown and become itchy. Her GP urgently referred her for examination and she was seen at St Andrew's Hospital, part of the Newham University NHS Trust, 10 days later.

A Consultant examined Laura and came to the conclusion that her mole

*Jonathan Zimmern recovered £170,000 compensation for Laura's family*

was benign. In fact, he was wrong. The mole was cancerous and should have been removed urgently.

The mole continued to grow and by November 2005 was bleeding on contact and associated with a hard lump in Laura's groin. She was referred back to hospital where she was seen by a Specialist Registrar in dermatology.

The Registrar carried out a biopsy of the mole under local anaesthetic and discovered that in fact it was a malignant melanoma (or skin cancer). Surgery was performed to remove the cancerous cells and Laura also received chemotherapy to treat secondary cancer that was found to have spread to her lungs.

Unfortunately, and not-withstanding the aggressive treatment, the cancer continued to progress and Laura died on 25 August 2007.

Laura's husband pursued a claim for medical negligence against St Andrew's Hospital and the Consultant who had originally examined Laura and advised that the mole was not malignant.

We obtained expert medical evidence to show that the melanoma should have been diagnosed in early 2005 and had treatment been provided then, Laura would have had a more than a 50% chance of survival The hospital never admitted liability but Jonathan Zimmern settled the claim for £170,000. The claim was taken on a "no win, no fee" basis.

# Delayed diagnosis of cervical cancer

**Daughter fights for justice for mother negligently given all-clear on smear test and awarded £700,000.**

Linda died at the age of 52 on 5 December 2006 from cervical cancer. She was married and had two children and had worked as a Deputy Head Teacher in a local school.

Before she died Linda pursued a formal complaint against the hospital run by Portsmouth Hospitals NHS Trust and asked her daughter, Roxanne, to pursue a legal claim in the event of her death. Samantha Critchley acted for the family.

Experts instructed by Samantha advised that in April 1999 a cervical smear was negligently reported as being negative, and in April 2003, when the cervical cancer was finally diagnosed, the hospital failed to remove all of the abnormal cells. The Hospital strongly denied that the smear showed any abnormalities in 1999.

The Hospital admitted that the care given in 2003 was unacceptable but denied that any treatment at this time would have saved Linda's life.
The case was fixed for trial in December 2011.

Astonishingly, just a matter of days before the cytology experts on both sides were due to meet to examine the smear slide under a double-headed microscope, the Defendant advised that the crucial 1999 slide had been lost. This was very serious and it meant that the expert discussion could not proceed.

The Oncology experts meeting did proceed and the Defendant's expert accepted that had the cancer been treated appropriately, even in 2003, then Linda would have been cured.

*The Defendant's starting offer in May 2010 had been £20,000. We secured a settlement of £700,000*

A negotiation meeting went ahead in September 2011.

The Defendant's starting offer in May 2010 had been £20,000. We secured a settlement of £700,000. After the case Linda's daughter said of Samantha:

*"I genuinely cannot thank you enough for your work and guidance over the last few years. A claim like this will always be a stressful experience due to the memories and regrets it provokes but you always dealt with it so respectfully and I actually found going through this process helped with my own personal grieving".*

# £140,000 recovered for spinal surgery

**Richard Earle, a Senior Associate to watch, recovered £140,000 for Daniele who had to have major spinal surgery because her GP and the Whittington Hospital failed to diagnose and treat her illness.**

Daniele, who is now 45, suffered from numbness in her hands as well as heaviness in both her legs. This started to affect her mobility. She had to stop jogging and as her symptoms worsened she became very clumsy and would often lose her balance.

Daniele visited her GP a number of times, but he did not refer her to hospital as he should have done. In the end, desperate for help, Daniele attended the A&E department at the Whittington Hospital who failed to adequately investigate or take her complaint seriously.

The hospital suggested that Daniele was suffering from psychiatric not physical problems.

Just over a month later, Daniele returned to the same hospital. This time they did take her complaints seriously.

*Richard Earle recovered £140,000 for Daniele*

On investigation by scan, it was discovered that Daniele was suffering from cervical myelopathy (a compression of the spinal cord in the neck). This was putting pressure on the vertebrae in her back and compressing the nerves. This led to heaviness and loss of power in her legs.

Daniele was referred to an orthopaedic surgeon and underwent major spinal surgery. She still has difficulty walking and is, on occasion, unsteady on her feet.

Daniele instructed Richard Earle to pursue a claim for medical negligence against the hospital and Daniele's GP.

After an initial offer of £5,000 Richard Earle negotiated settlement at £140,000 damages together with payment of Daniele's legal costs.

At the end of the case Daniele said:

> *"I am very grateful to Richard for his kindness, determination and support in pressing on and winning my case in such difficult circumstances when others had said I had no chance"*
>
> Daniele

# £10.5 million package secured against Lewisham Hospital

**Paul McNeil secured a compensation package for Angela who suffered brain damage at birth.**

In May 2011 the Court approved a settlement in excess of £2.8 million plus annual payments to ensure that Angela, then aged six years, gets the best care, support and education and to ensure that all he needs are met throughout her lifetime.

Angela was born at Lewisham University Hospital, London on 1 September 2005.

Medical staff failed to establish an adequate labour management plan. There was also a failure to respond appropriately to abnormalities in the fetal heart monitoring (CTG), along

*Paul McNeil negotiated a settlement package of £10.5 million for Angela's future care needs.*

with a failure to manage the oxytocin regime (a drug used to stimulate contractions).

During labour she was deprived of oxygen and this resulted in her suffering catastrophic brain damage.

Unusually Angela does not have severe physical injuries or developmental delay but she does have considerable behavioural and communication problems meaning that she also requires waking night care as she has a very disrupted sleeping pattern.

The settlement will provide resources for her intensive and highly skilled behavioural modification programme hopefully substantially improving her own and her family's quality of life. Paul McNeil pursued a claim against Lewisham University Hospital. The hospital admitted negligence at a settlement meeting in March 2010.

The settlement provides Angela with the financial assistance she needs to receive proper care, therapy, treatment and education and allow her to have the highest quality of life possible.

# £1 million for loss of mother during pregnancy

**This claim concerned events which are amongst the most tragic which could be imagined. Nikita was born on 15 November 2005 with profound and catastrophic brain damage. Kelly, her mother, at the time of birth, was unconscious and died the following day from the effects of a brain bleed.**

Kelly's mother and aunt had died during pregnancy as a result of a genetic pre-disposition to brain bleeds during pregnancy. The Hospital's midwives and obstetricians ought to have investigated the family history and treated Kelly during the pregnancy. The knowledge of Kelly's personal and family history should, with competent care, have resulted in the pregnancy being classed as "high risk" and being supervised by a consultant obstetrician. In addition Kelly should have recieved prophylactic doses of low molecular weight heparin. With such treatment Kelly would, on the balance of probabilities, have survived.

In fact the referral for consultant led care made by a midwife was not

*A global offer to settle the claim was made in the sum of £1,000,000 by Portsmouth Hospital NHS Trust*

acted upon. Throughout the pregnancy Kelly did not see a consultant obstetrician as she should have done.

Unfortunately when Kelly began to suffer the effects of her genetic condition these were never acted upon and sadly Kelly died on 16 November 2005 and was unconscious at the time of Nikita's birth.

Nikita herself was born with devastating injuries but it was difficult to establish that earlier treatment to Kelly would have made a difference to her condition.

Proceedings were issued and the defence accepted that Kelly should have been referred to a consultant obstetrician and consultant neurologist and that she should have been carefully monitored throughout the pregnancy.

The Trust admitted that once Kelly was admitted to St Mary's Hospital she should have been treated with low molecular weight heparin which would have saved her life. No such admission was made in relation to Nikita and the Defendants argued, with the support of expert evidence, that her injuries were coincidental and unrelated to her mother's collapse.

A global offer to settle the claim was made in the sum of £1,000,000 which included an award for sums for the loss of dependency of Nikita on her mother in her injured state and damages for her father's psychiatric injury and loss of earnings. The settlement enabled this very tight knit family to purchase adapted accommodation for Nikita so that she and her father can move from their unsuitable present accommodation into an adapted house. The remainder of the damages will be used to ensure that Nikita is cared for in so far as the family are unable to do so.

# Settlement for negligent medical treatment after birth

**We recently helped our client, Shannon, to secure a settlement of £350,000 following negligent medical treatment after the birth of her first child.**

*Rose-Anna secured a settlement £350,00 for Shannon following negligent treatment after the birth of her first child.*

The injury itself was not caused by negligence but the failure to recognise, investigate and treat was key.

Shannon suffered a third degree anal tear during labour. The anal tear meant substandard care by the Obstetrician at the hospital.

Shannon was left incontinent of faeces and wind for over 3 years before her condition was finally diagnosed and repair surgery was carried out.

Our expert evidence confirmed that with early recognition the tear would have been easily repaired. Instead Shannon suffered pain and embarrassment and found it extremely difficult to pursue her career as a make up artist.

Settlement was reached 2 months before trial and the money will attempt to compensate Shannon for the pain and suffering she endured, her loss of income both past and future and the care that she needed, both for herself and for her young son.

The award also gave Shannon the opportunity to undergo a private caesarean section for the birth of her second child.

# Royal Victoria Hospital, Newcastle pays £2.9 million for botched forceps delivery

**Paul McNeil acted for John in connection with his birth on 1 March 1997 at the Royal Victoria Hospital in Newcastle.**

*On a conventional lump sum basis the award is valued at just under £2.9 million.*

Local solicitors were previously instructed but had made little headway. The labour unfortunately gave rise to a severe traumatic injury to John's skull and brain. Liability was ordered to be tried as a preliminary issue in November 2009. Shortly before the trial the Defendant agreed to accept 85% of responsibility for the injury which we argued was caused by the injudicious use of kielland's rotational forceps during the course of his delivery.

John suffered a serious cosmetic disability, right sided hemiplegia, traumatic brain injury and as a result learning difficulties.

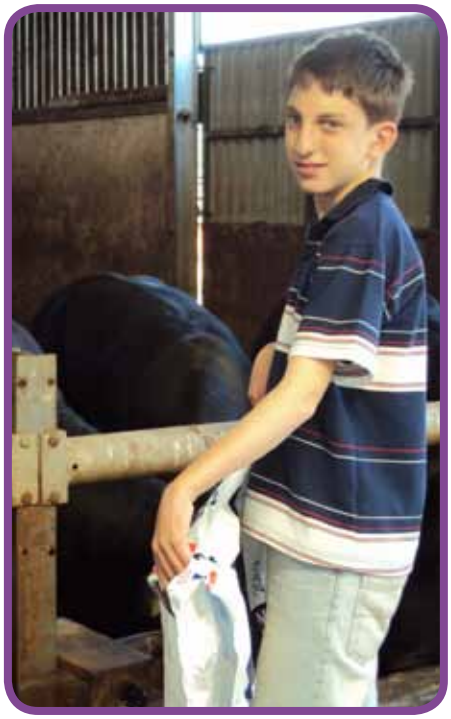
In May 2011 settlement of the case was approved by the High Court. A lump sum was made in the sum of £1.4 million. Periodical payments were made to cover the cost of care and support for the rest of John's life. On a conventional lump sum basis the award is valued at just under £2.9 million.

John, at the time of the settlement, was a lovely and determined 14 year old boy who lived with his parents and sisters on the family farm in Cumbria. John is determined to follow the family into farming.

It is clear that but for his injury he was highly likely to have worked with his father and grandfather in the farm business which he is now not able to do. The settlement and annual payments will allow John to purchase the necessary care and support to enable him to work on the farm as an adult without depending on the support of his parents and grandparents.

After the case his parents said as follows:

*"We are very pleased with the outcome which secures John's future and will provide him with a lifestyle where he is happiest – working alongside his father and grandfather. We could not have achieved this without the help of Paul and his team, who from our first meeting with them have gone out of their way to make the whole legal process as painless as possible. The last 14 years have been extremely stressful for our family and we now feel that we can move forward without too much worry about what the future holds for our son"*



# Settlement for incontinence after childbirth

**Mark Bowman has recovered substantial damages for Bridget, after she suffered life changing injuries following the birth of her first child at Hillingdon Hospital.**

On 07 September 2007, Bridget, who was almost 41 weeks pregnant, was admitted to the Hillingdon Hospital for delivery of her first child. Bridget required an epidural injection and a syntocinon infusion to speed up the delivery of her baby.

Following the performance of a vaginal examination, a urinary catheter was inserted. Checks should have taken place to ensure that the catheter was inserted correctly, and that it remained in place. Such checks were not documented within Bridget's medical records.

*Mark Bowman recovered damages for Bridget, after she suffered life changing injuries following the birth of her first child.*

Bridget gave birth to a healthy baby but sustained a second degree tear to her perineum which was sutured by the midwife. At this point the urinary catheter was also removed. Shortly after this, Bridget stood up and had an episode of urinary incontinence.

Bridget has subsequently remained incontinent of urine and requires the daily use of incontinence pads. Bridget's quality of life has been affected as a result of the injuries which she sustained.

We were instructed to investigate a claim against the Hillingdon Hospital NHS Trust and obtained expert evidence from a midwife who confirmed that the standard of midwifery care provided to Bridget was substandard.

In particular there was no reference to Bridget's fluid input and output levels being checked,which would have established that the catheter was not working properly.

A letter of claim was sent to Hillingdon Hospital. It was admitted that the midwife's note keeping had been poor, but it was denied that Bridget's injuries were caused by any alleged substandard treatment. The trust argued that the injuries sustained were entirely consistent with normal labour and delivery.

Following negotiations with the NHSLA the claim settled out of court.

# £160,000 for psychiatric injury after birth

**Edwina Rawson brought a claim for compensation on behalf of Lisa for treatment she received at the Queen Elizabeth Hospital.**

Lisa suffered a life-threatening haemorrhage after having given birth to her daughter. She had a pre-existing vulnerability to depression. After a period in the Critical Care Unit, Lisa made a good recovery but suffered a psychiatric injury.

Lisa was working as a Clinical Governance Coordinator/PA at the Queen Elizabeth Hospital at the time of her daughter's birth. She was not able to return to work after maternity leave.

*We argued on Lisa's behalf that she would not be able to work for a few years because of the psychiatric injury*

We argued on Lisa's behalf that she would not be able to work for a few years because of the psychiatric injury, and that she would never be able to return to such a demanding role. The Defendant argued that Lisa would probably have suffered depression in any event, and that there were other reasons why she had decided not to return to work. Also, they said that she was presently fit to return to work, even to a demanding role. The claim settled for £160,000.

> *"Throughout my case, Edwina Rawson and her team were so understanding and made me feel as if I were their only client. I do not think that I would have continued with the case if it was not for their support and empathy"*
>
> Lisa

# Meeting needs in cerebral palsy claim

## Facts

**Dermot suffered catastrophic injuries as a result of the negligence of the obstetric team at St Peter's Hospital in Ashford which left him with very severe disabilities including quadriplegic cerebral palsy, epilepsy, visual impairment and developmental delay. He has very significant care needs and is totally dependent on others.**

He was born on 9 June 2006. An internal inquiry by a leading obstetrician at the hospital confirmed that there had been an abnormal foetal heart at least 12 hours before Dermot's birth. This had not been recognised or acted upon by the midwives or obstetricians.

## Tactics

In early 2007 Dermot's mother contacted Paul McNeil and we wrote to the hospital seeking an admission of liability on the basis of the internal report. Unsurprisingly, there was no response from the Defendant and we instructed experts in obstetrics,

*We requested an interim payments to cover ongoing care and housing costs.*

neonatology and neuro-radiology to report on the issues of breach of duty of care and causation of injury. We received positive supportive reports. At that time Dermot and his family were living in wholly unsuitable accommodation in which full-time care was being given by his parents who were under considerable stress. The situation was exasperated by the delay of the Defendants in dealing with the claim.

We requested an interim payment to cover ongoing care and housing costs which was refused. The local Social Services were of little help.

To expedite we therefore obtained reports from care and accommodation experts. In July 2008 the Defendants formally admitted that Dermot should have been born approximately 12 hours earlier but continued to deny that such earlier delivery would have altered Dermot's condition.

Accordingly proceedings were issued on 9 July 2008 and immediately an application was made for a very substantial interim payment. We understood that as a result we would be required to disclose (unusually) all our expert evidence "up front".

At a hearing in October 2008 a Judge ordered that the Defendant do serve an amended Defence explaining the reasons for its causation stance. The Defendant did not amend its Defence. Instead by letter dated 15 December 2008 the Defendant agreed to Judgment being entered and an interim payment being made in the sum of £850,000.

## Interim payments

The initial interim payment was immediately utilised to provide case management and care services so that the burden on the parents could be reduced. The family moved to rented accommodation (which was larger than

their existing property) and began the long search for suitable accommodation which could be adapted to the needs of Dermot, his family and his carers. After a false start, a suitable property was found in June 2009 and works began to make the property suitable after the family had instructed their own architect and quantity surveyor. Further substantial interim payments were made to fund the cost of the work, the rental of the alternative property (whilst the work was being carried out) and the provision of care. In addition, a vehicle was purchased for Dermot and funds were released to undertake a gastroscopy and obtain advice in relation to Dermot's epilepsy. Dermot and his family were able to move into the property in March 2011.

## Final Result

In the meantime the legal case was proceeding towards an Assessment of Damages with the Hearing fixed for 3 October 2011 (our experts had advised that in order to be sure about Dermot's life expectancy he needed to be aged five or more). The negotiations between the parties were unusually fraught with two settlement meetings failing to resolve the issues.

Eventually the Defendants agreed to a settlement of a lump sum of £2,640,000 and annual payments for care and case management. On a capitalised basis and on an agreed life expectancy to age 31 years the settlement amounted to just under £7million. After the case, Dermot's mother told us that:

*"My strong view was that the Defendants took every opportunity to try and delay settlement and make interim payments. This put enormous strain on our family. Paul was always one step ahead and did everything he could to ensure that funding was obtained and that our lives were returned to near normal as quickly as possible. We are very grateful to him and our barristers"*

Dermot's home which has been adapted to his disabilities

Physiotherapy room

Adapted bathroom

Acccessible garden

# King's College Hospital pay £1 Million for failing to treat ectopic pregnancy


**We recovered compensation for Louise following a failure to properly investigate and treat an ectopic pregnancy which resulted in her suffering life threatening injuries and her husband suffering shock and injury.**

Louise became pregnant for the first time in 2007 when she was aged 31. She attended Kings College Hospital in June 2007 when she was six weeks pregnant with a threatened miscarriage. She underwent a pelvic scan and was diagnosed with an ectopic pregnancy in her left fallopian tube.

Louise underwent keyhole surgery to remove both the pregnancy and the left fallopian tube. During the surgery the ectopic pregnancy in the left tube was confirmed and it was noted that her right fallopian tube was normal. She was discharged from hospital the following day. No plans were made for a follow up. Unbeknown to Louise, microscopic examination of the removed left fallopian tube showed no pregnancy.

In the following weeks, Louise still "felt pregnant" and took a home pregnancy test which revealed she was still pregnant. A further scan revealed that the pregnancy was right sided and located outside of the uterine cavity in that part of the fallopian tube that penetrates the muscular layer of the uterus.

*Paul negotiated interim payments to cover the cost of IVF and counselling sessions*

Louise underwent a procedure which attempted to terminate the pregnancy without the need to remove her remaining right fallopian tube and so maintain her fertility. However this was unsuccessful and was repeated two days later. An ultrasound scan after the second procedure was said to confirm that the pregnancy had ceased.

More than three weeks later on a much deserved weekend break in Canterbury, Louise collapsed in front of her husband and appeared to be lifeless. She was taken by ambulance to Queen Mother Hospital in Margate and required urgent resuscitation.

Emergency surgery was carried out which discovered that there remained an ectopic pregnancy which had ruptured and 4 litres of blood was aspirated from Louise's pelvis and abdomen. As a result Louise required further gynaecological treatment, including two further surgeries, and at the end of this she was rendered infertile (although subsequently she underwent IVF treatment and gave birth to twins in 2009).

Louise and her husband instructed Paul McNeil to pursue a medial negligence claim against King's College Hospital.

Louise was unable to return to work as a Senior Manager dealing with personal injury claims and was medically retired in 2008. Her husband's career also suffered as a result of the traumatic events that had occurred.

Paul negotiated interim payments to cover the cost of IVF and counselling sessions. After lengthy discussions, we negotiated a settlement of over £1million. Louise's husband accepted a settlement of £50,000.

After the case settled, Louise said:

> *"We only have praise and we feel that you should be recognised for this, so that other future clients can also reap the benefits of your highly recommended and excellent legal services. ... so from the bottom of our hearts, thank you so much."*

# Award for second patient overdosed at London teaching hospital

**Mark Bowman described by a leading directory as "developing a niche practice in the drugs trial field" has recovered compensation for a second client who was overdosed during a clinical trial at University College London Hospital (UCLH).**

Aidan, who is now 26, developed pain in his groin in early 2007. He visited his GP and was referred to a specialist who diagnosed him with testicular cancer.

Aidan was referred to UCLH for chemotherapy. Aidan was advised about a number of chemotherapy regimes to treat the cancer, including the TE23 trial that the hospital was part of. Aidan enrolled on to the trial.

Under the trial, patients were randomised into two groups. In the first group patients would receive standard chemotherapy treatment involving the prescription of bleomycin, etoposide and cisplatin. This is known as "BEP" chemotherapy.

In the second group, an experimental regime involving five drugs, namely bleomycin, cisplatin, etoposide, carboplatin and vincristine, was prescribed. This is known as "CBOP-BEP" chemotherapy.

*Aidan instructed Mark Bowman to pursue a claim against UCLH after he read about Mark's previous successful claim against UCLH.*

*Aidan instructed Mark Bowman to pursue a clinical trial negligence claim against UCLH.*

The trial, was investigating whether CBOP-BEP chemotherapy was more effective than BEP chemotherapy.

From April to July 2007 Aidan made regular trips to UCLH, to receive CBOP-BEP chemotherapy.

At the end of Aidan's treatment on the CBOP-BEP regime it was discovered that he had been massively overdosed with one of the chemotherapy drugs, bleomcyin, which can seriously effect lung function.

The mistake was only realised as another patient that had been receiving CBOP-BEP chemotherapy at UCLH at around the same time as Aidan, had also been overdosed. Sadly that patient died as a result of the bleomcyin overdose. Mark won compensation for the deceased's estate.

As a result of Aidan's overdose he began to experience shortness of breath, likely to have been caused by an overdose of bleomycin.

Aidan instructed Mark Bowman to pursue a claim against UCLH after he read about Mark's previous successful claim against UCLH.

Mark investigated a claim against UCLH and alleged that Aidan had suffered shortness of breath as a result of the negligent overdose of bleomycin.

In May 2011, only four months after Mark had been instructed, UCLH offered to pay Aidan £15,000 compensation, which he was happy to accept.


Bleomycin which was administered to Aidan

*"I was very happy with the way Mark acted on my behalf. I was kept up to date with everything that went on and it was dealt with quickly and in a very professional manner"*

# Settlement for near fatal superbug infection at Guy's Hospital

**Edwina Rawson recovered compensation for her client who nearly died following a hospital-acquired infection caused by a superbug at Guy's Hospital in London.**

Alfred almost died as a result of an outbreak of pseudomonas that killed one woman and infected about 19 others at Guy's Hospital in late 2005.

The bacteria is naturally resistant to antibiotics but less common than other hospital-acquired infections such as MRSA.

A senior doctor at the hospital told Alfred, a 44 year old plumber from Luton, that the almost fatal blood poisoning he developed had been caused by pseudomonas carried on medical equipment.

The bacteria was present on an unclean microscope that doctors used in November 2005 when they removed a stent that had been used to treat kidney stones.

*Guy's Hospital eventually agreed to settle for more than £500,000 without the need to go to court.*

Alfred spent seven weeks in hospital undergoing treatment to eradicate the infection.

Alfred was extremely unwell and at one point close to death following the infection with pseudomonas. Despite intensive treatment he has not made a full recovery. He has been unable to return to his work as a plumber or to pursue sports and remains in persistent pain. Edwina Rawson pursued a claim for compensation for Alfred.

Guy's Hospital initially took a surprisingly defensive approach to the case, but eventually agreed to settle for more than £500,000 without the need to go to court. The claim proceeded under a no-win no-fee agreement.

*"We are only so thankful that our paths crossed. You have become a very special person in our hearts."*

Alfred and his wife, Veronica

# Chloé's life would have been saved by mandatory vaccine

**Chloé was born on 4 April 2006. When she was five months old the pneumococcal conjugate vaccine (PCV) was introduced into the UK immunisation programme to protect children against a bacteria which can cause meningitis, septicaemia and pneumomia. Chloé should have been offered the PCV as part of a "catch-up" programme, which was also introduced at the same time.**

Unfortunately her GPs failed to include Chloé in the catch up programme. A further opportunity to include Chloé was lost when her Health Visitors failed to inform the GPs that Chloé had not had the vaccine. As a result of these failures, Chloé was not given the PCV and she subsequently developed pneumococcal meningitis and sadly died on 15 February 2007 when she was ten months old.

Samantha Critchley noted in the directories to have "devoted client care and strong legal expertise" pursued a claim for Chloé's unnecessary pain and suffering and the psychiatric injury suffered by her parents, Amanda and Andrew, who witnessed her deteriorating condition at hospital.

*The claim was eventually settled for £180,000. The case was never about financial compensation*

They eventually had to make the heartbreaking decision to turn off the life support when doctors advised Chloé would not survive.

Court proceedings were served in November 2010 and in March 2011, the Defendants agreed to judgment being entered. Somewhat surprisingly, later the same month, the Defendants wrote contesting the claim on behalf of Chloé's parents. We went to court and successfully secured judgment for Amanda and Andrew at a contested hearing.

The claim was eventually settled for £180,000. The case was never about financial compensation. The parent's principal aim was for lessons to be learned and for this never to happen to another family. As a result the parents' complaints to the NHS Trust responsible for the Health Visitor's omissions conducted a full investigation and ensured that all GP practices in the area were warned of what happened to Chloé and how this should have been avoided.

After the case the parents thanked Sam for her "help, support and professionalism". The case was conducted on a "No win, no fee" basis.

*Samantha Critchley noted in the directories to have "devoted client care and strong legal expertise" pursued a claim for Chloé's unnecessary pain and suffering and the psychiatric injury suffered by her parents, Amanda and Andrew, who witnessed her deteriorating condition at hospital.*

# St. George's pays £1.4 million following a heart operation causing brain injury

**On 9 September 2006, Gerry, then aged 59, underwent a cardiac ablation procedure under general anaesthetic at St. George's Hospital.**

He had suffered from atrial fibrillation, a heart condition which causes an irregular heartbeat and palpitations. The procedure is performed by a cardiologist by inserting a flexible catheter via the femoral vein which is then guided into the heart to ablate or destroy small areas in the heart causing the condition.

Unfortunately, Gerry suffered a stroke during the procedure when a blood clot from his heart caused an embolus in his brain. He has been left seriously disabled, and as a result lost his job as an Assistant Secretary with a Teacher's Union and he needs day to day support and care.

*Richard Earle worked enormously hard*

Richard Earle investigated the case by obtaining reports from specialists in Cardiology, Neurology and Haematology, liability having been denied by the Defendant Trust. The experts strongly advised that Gerry was inadequately anticoagulated (i.e. his blood was insufficiently thinned) both prior to and during the procedure. In addtion, no pre-operative investigations had been undertaken to determine whether there was already a clot within his heart which might be disturbed. Further, the risks of the procedure were not fully explained to Gerry, meaning that he was not provided with informed consent.

Proceedings were issued and the case fixed for Trial on 16 January 2012. After exchange of expert evidence the Defendant made an offer of just under £1 million damages on a final sum basis. Following negotiations the claim settled by way of a lump sum of £720,000 together with annual periodical payments of £40,000. This amounted to a capitalised sum of nearly £1.4million. These payments are tax free for life and will ensure that Gerry has enough care and support in the future.

The case was funded on a "No win no fee" basis. After the case praise for Richard was as follows:

*"The family & I are absolutely delighted with the settlement. It has been a long, hard road but worth it in the end. Richard worked enormously hard to achieve this."*

# Lack of communication led to suicide of 21 year old

*"A big thank you for all your efforts and hard work! Your support and encouragement has meant so much and helped me to press forward with the claim. Thank you so much!"*

Deborah Higgs

**Edwina Rawson acted for Deborah Higgs following the death of her daughter, Crystal, who was aged 21. We represented Deborah at an inquest that took place in March 2011 and we are also bringing a claim for compensation for Crystal's son.**

Crystal had a history of mental health problems, and was admitted to the psychiatric ward of Edgware Hospital for treatment run by Barnet, Enfield and Haringey Mental Health NHS Trust.

In July 2006, Crystal was accompanied by a nurse to a shop outside the hospital grounds. The nurse was too junior to be caring on her own for a patient with Crystal's condition.

As a consequence, Crystal absconded. She got on a bus, went to Brent Cross Shopping Centre, and tragically jumped to her death from the top of the multi-storey car park.

Shortly before the inquest, the hospital admitted that the care it provided it had been "sub-standard" in allowing an inexperienced nurse to care for Crystal on her own.

*Edwina continues to pursue a claim for compensation.*

The coroner found that Crystal would probably "not have absconded, therefore preventing her death", with proper care to ensure that Crystal was always in eyesight.

The inquest also established that staff had neither recorded nor shared with colleagues their knowledge that Crystal had been having suicidal thoughts in the days before they agreed to let her go to the shop.

There was also a delay in alerting the police that Crystal had gone missing.

A police officer told the inquest that if the police had been informed earlier, a patrol car would have been sent to Brent Cross, as Crystal had been found previously at the top of the car park.

On that earlier occasion, a security guard had managed to talk her into coming down.

Naturally, the family were apprehensive about the inquest, but it answered many of their questions.

The verdict of the jury was that "a breakdown in communication could have resulted in relevant information not being made available during the decision-making process and this could have been a factor in preventing her death."

Edwina continues to pursue a claim for compensation.

*The inquest also established that staff had neither recorded nor shared with colleagues their knowledge that Crystal had been having suicidal thoughts in the days before they agreed to let her go to the shop.*

# Deafness caused by ENT negligence

**We recovered £95,000 for Louise, who lost the hearing in her left ear because of ENT negligence at Whipps Cross Hospital.**

Louise, who is now 27, suffers from a hereditary inner ear bone disease called otosclerosis in both her ears. The condition can cause conductive hearing loss.

In late 2005, Louise's, (then aged 22) hearing began to deteriorate. She consulted her GP, who referred her to the Ear, Nose and Throat (ENT) department at Whipps Cross Hospital.

At the hospital, Louise was told that she could wear a hearing aid to improve her hearing or undergo surgery, which would help improve her hearing.

Louise decided to undergo the surgery because she was advised that it was low risk and had good prospects of success.

After the operation in December 2006 Louise returned to have her bandages removed. She underwent a hearing test and it was clear that she could not hear anything in her left ear.

The surgeon explained that this could happen and it may take some time before her hearing returned.

*Mark Bowman recovered £95,000 for Louise,who is now deaf as a result of ENT negligence at Whipps Cross Hospital.*

Sadly, in October 2007 the surgeon advised that she would never regain hearing in her left ear.

This has been devastating for Louise psychologically, and significantly impairs her life and ability to carry out everyday tasks.

Mark Bowman pursued a claim against Whipps Cross Hospital on Louise's behalf. Having obtained expert advice from an ENT expert, allegations were raised concerning the way in which Louise was consented for surgery, the performance of surgery itself and the post operative care that she received.

A letter of claim was served on Whipps Cross Hospital, which admitted liability. Following negotiations with Solicitors for the hospital, the claim settled in the sum of £95,000.

*" Mark worked diligently until the case was over. He knew every minute detail of my case, helped me on any query, no matter how big or small, and I trusted him implicitly to achieve the result we were after.*

*I cannot thank Mark enough for helping to settle my case in such an efficient professional way "*

Louise

# Award for psychiatric injuries caused by failed insertion of catheter


**Jonathan Zimmern recovered compensation for the family of a man who suffered damage to his urethra and psychiatric injury following multiple failed insertions of a catheter.**

Jonathan negotiated a settlement of £19,000 for Isaac's family in a medical negligence claim against Colchester Hospital University NHS Foundation Trust.

Isaac originally brought the claim for the injuries he suffered to his urethra during several attempts to insert a catheter during his admission to Colchester General Hospital in July 2008. The period in hospital during which the attempts were being made to insert the catheters was particularly shocking and painful.

Although the damage to his urethra healed, he suffered psychiatric injury as a result of his experience and he required care from his wife whilst at home.

*Jonathan negotiated a settlement of £19,000 for Isaac's family*

Sadly, Isaac died in October 2010 of an unrelated condition.

After his death, his claim was taken over by his daughter and personal representative, Deborah, who accepted an offer of £19,000 to settle the claim.

The case was conducted under "a no win, no fee" agreement.

*Jonathan negotiated a settlement of £19,000 for Isaac's family in a medical negligence claim against Colchester Hospital University NHS Foundation Trust*

# Romy wins right to choose the best school for her complex needs caused by autism

**Romy, now aged 11, successfully claimed for compensation against the Lister Hospital in Stevenage for the injuries she sustained a few days after her birth when she was a patient in the Special Care Baby Unit.**

Romy was over-infused with dextrose. This caused a perfusion injury to her brain and resulted in severe learning difficulties including Autistic Spectrum Disorder.

At the time of the High Court trial, in 2008, Romy was being educated at a state-funded special needs primary school in Hertfordshire. All the experts agreed that this was very likely to be unsuitable for her future needs. Romy's parents objected to the proposed named school in the statement and wished to appeal to the Special Educational Needs and Disability Tribunal (SENDT).

At the trial, Mr Justice Penry-Davey awarded damages to Romy to allow her to appeal the statement and he adjourned the issue of her claim for the cost of future education in the following terms:

*Both Romy and her parents were extremely happy with the progress she was making*

*"Mr & Mrs Smith want the Claimant to attend Radlett Lodge School but the issue of funding is unlikely to be resolved before the outcome of two Tribunal Appeals... Because there are potentially large sums involved in my Judgment it is appropriate that I give liberty to the Claimant to apply for a future trial on the issue of damages for school, care and therapy fees to the age of 19 in the event of an appropriate Education Authority failing to meet the expenses of the appropriate school."*

In the event, Romy's appeal to the SENDT was not successful. As a result it was necessary for Paul McNeil to seek to compel the Hospital Trust to pay the substantial costs of the Radlett Lodge School which has a pre-eminent reputation for sucessfully educating children with Autistic Spectrum Disorder. Indeed, by the time of the hearing Romy had started at the school and both Romy and her parents were extremely happy with the progress she was making.

A few days before the Education Hearing in February 2011, the defendants agreed to pay for Romy's education at the Radlett School. The past school fees and expenses were paid by way of a lump sum and the future costs were paid by way of an Annual Payment Order which took account of future increases in school fees.

After the case Paul McNeil said: *"In many ways Romy's case was novel. But in my view the principle is that she is entitled to opt for self-funding (and therefore choosing the best school for her needs) in preference to reliance on the statutory obligations of the Education Authority. This is particularly important when spending cuts are clearly affecting the public provision of education to those with cognitive, behavioural or physical disabilities who most need it."*

Payment of the school fees provides the best education for Romy

# Meet the team

**Paul McNeil**
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Paul heads the personal injury and medical negligence department and has specialised in claiming on behalf of victims for over 20 years. He is a member of both the Law Society and AvMA clinical negligence panels. He is responsible for High Court Users group and frequently writes and lectures on the subject.

**Samantha Critchley**
**Partner**
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Samantha has over a decade of experience acting for claimants in medical negligence claims. She has expertise in acquired brain injury cases involving adults and children. Samantha is on the AvMA clinical negligence panel and is a member of the Association of Personal Injury Lawyers (APIL).

**Edwina Rawson**
**Partner**
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Edwina is a partner in our medical negligence team. She is on the Law Society's clinical negligence panel and is a member of the Association of Personal Injury Lawyers (APIL). Edwina gives regular presentations to AvMA and APIL.

**Richard Earle**
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Richard specialises in medical negligence claims and is a member of AvMA and the Law Society's clinical negligence panel.

**Mark Bowman**
**Senior Associate**
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Mark pursues cases on behalf of victims of medical negligence. A member of the Law Society clinical negligence panel, Mark is also a senior litigator at the Association of Personal Injury Lawyers (APIL).

**Jonathan Zimmern**
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A barrister, Jonathan acts for those injured through negligence or accidents. Jonathan is a member of the Association of Personal Injury Lawyers (APIL) and a volunteer on the AvMA helpline.

**Rose-Anna Lidiard**
**Solicitor**
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Rose-Anna joined the team in November 2010 and specialises in medical negligence claims. She manages her own varied case load as well as assisting other members of the department with complex and high value cases.

**Sarah Saldanha**
**Solicitor**
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Sarah trained at Field Fisher Waterhouse and joined the medical negligence team when she qualified in 2010. Sarah assists on a variety of medical negligence claims as well as managing her own case load.

*"With a reputation for efficiency, the team put through an impressive volume of cases, and push them relentlessly forward."*

Chambers UK, 2011

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