

# Medical Negligence Review

Spring 2013

 Field Fisher Waterhouse

**Focus:** The Trial  
Spinal Surgery

Breast Implant  
Surgery

Bowel  
Surgery



Midwifery  
Care

Surgical  
Compression  
Injury



Diabetes

Cerebral  
Palsy

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Nursing  
Care

**+ Plus**

Genetics  
Drugs  
Obstetric Care  
Gynaecology  
Orthopaedics  
Brain injury  
Meet the team



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## Welcome to the Spring 2013 Edition of our Medical Negligence Review



At the beginning of 2013, Robert Francis QC completed his report on the Mid Staffordshire Inquiry. He was concerned about; the lack of

focus on standards of service, inadequate assessment of staff reduction, poor nursing standards and performance and the wrong priorities within this NHS Trust. It goes without saying that our clients have for many years been concerned about the same matters across the NHS and private practice.

It is often the case that the initial enquiry to Field Fisher Waterhouse is unconnected with a desire to obtain compensation. More often it is to prevent a similar tragedy happening to another family. It is clear that many of the investigations that we undertake on behalf of our clients are hampered by the lack of clarity given in relation to the facts surrounding the incident.

The culture in the NHS and private practice is all too often to hide the truth from our clients. This is why we fully support the Francis recommendation that clinicians should have a Duty of Candour so that from the outset when things go wrong, the patient is kept fully informed of the reasons for the mistake and the investigations and steps that are taken to prevent it from happening again.

The Spring 2013 edition of our "Medical Negligence Review" shows how hard we have worked to overcome the culture in the NHS to defend cases. The review highlights our philosophy of "caring for our clients, commitment to our cases and cutting edge expertise".

Paul McNeil

*FFW's clinical negligence team has a "formidable reputation" and a great range of expertise, frequently undertaking the most complex claims in this practice area. In the past twelve months they have handled cases that involve negligence in the fields of obstetrics, general practice and cosmetic surgery.*

Chambers, 2013



*Field Fisher Waterhouse LLP maintains its outstanding reputation in the market. The team provides a 'first-class' service at all levels of experience.*

The Legal 500, 2012



# £1 million for model after negligent breast implant surgery damages career

Samantha Critchley and Rose-Anna Lidiard recovered £1 million damages for socialite, glamour model, and TV personality, EJ, in a claim against breast surgeon, Nigel Sacks.

EJ underwent surgery in February 2004 to replace her breast implants. During the procedure Mr Sacks negligently detached both pectoral muscles from the chest wall. As a result EJ suffered the loss of her cleavage with the right implant migrating across to the left breast. She was also left with asymmetry, severe pain and limitation of movement in her right shoulder. EJ was very distressed by her altered appearance.



*EJ underwent surgery in February 2004.*

After the surgery EJ received notification from Mr Sacks that he was unable to continue to treat her for 'administrative reasons'. It transpired that 'administrative reasons' in fact referred to criminal proceedings in which Mr Sacks was charged with nineteen counts of fraud in relation to a private health insurer. In June 2008, Southwark Crown Court stayed an indictment on the basis that Mr Sacks was unfit to undergo trial. Thereafter the General Medical Council (GMC) instigated proceedings which culminated in a fitness to practice hearing in 2010. It was again put forward on behalf of Mr Sacks that he was medically unfit to engage in the hearing and the GMC accepted his voluntary erasure from the doctors register.

EJ struggled to find another surgeon to operate and so the negligence was not discovered until September 2006 when her implants were permanently removed. EJ was left with a very poor cosmetic result, psychiatric injury and was unable to pursue her career. We obtained expert evidence from a plastic surgeon, a psychiatrist, a forensic accountant and a leading expert in the glamour model/reality TV business to help us quantify the claim.

Mr Sacks strenuously defended the claim and the matter was set down for trial on 25 September 2012. We were able to secure an admission of liability in early September and just days before trial negotiations resulted in settlement in the sum of £1 million. This was an excellent result, considering that the Defendant's starting offer had been £8,000. In addition EJ had initially been to two other firms of solicitors who were unable to pursue her claim. When Sam took the case on EJ was acting as a litigant in person.

*Thank you Sam and Rosie for your dedicated and talented hard work and determination with my case...You are the best in both your professional and client care, with the support of your unique team who all work in harmony together. This was the most difficult and traumatic time of my life and you stood by me throughout and I will be forever grateful. You always kept me informed with everything and even after hours, on holidays and weekends you were always there for me. You worked so hard for me, to give me a chance for a new beginning in life; you will always be close to my heart. //*

# £1.25m awarded against Whittington Hospital for woman left brain-injured after appendicitis



On 22 October 2012 the Court approved a £1.25 million settlement in what was a hotly fought case.

Samantha Critchley acted for J in the claim against the Whittington Hospital which settled less than two weeks before trial.

After developing appendicitis, J's appendix was removed in October 2006. Her recovery was complicated by an infection and obstruction of the small bowel. A decision was taken to re-operate in November 2006. The purpose of the operation was explorative with a view to fashioning a stoma. Instead of creating a stoma the surgeon performed very complex surgery which involved removal of part of the bowel and two further incisions to different parts of the bowel where there had been narrowing. The combined effect of the three procedures was to create three suture lines in the small bowel. In addition, the surgeon inadvertently damaged the bowel during the operation which resulted in faecal material escaping into the abdominal cavity. These factors created a high risk that one or more of the suture lines would break down due to the hostile environment in which they were placed.

Post operatively the bowel sutures did break down and J became septic. The sepsis caused her to suffer a critical illness, hypotension, multi-organ failure and acid in the blood. In January 2007 J suffered a stroke which left her with brain damage, which affects her



*After developing appendicitis, J's appendix was removed in October 2006.*

attention, memory, visual perception and verbal function. J also suffers from right hemiparesis which severely restricts the function of her right upper limb and her mobility and she suffers with a pain syndrome. As a result of her injuries J also became depressed. She is at risk of developing post-traumatic epilepsy.

At the time of the alleged negligence J was 37 years old. Prior to the events in November 2006 J was described by those who knew her as beautiful, glamorous, full of energy and very happy. She was engaged to be married and had a wide circle of friends. As a result of her injuries her relationship broke down, her employment was terminated and her former home was clearly unsuitable for her special needs. J has a close relationship with her sister and stepfather and they have provided her with the most devoted care.

Samantha advanced the claim alleging that the risk factors made it negligent for the surgeon to carry out the operation that he did and that a temporary ileostomy should have been fashioned; if this had been done the breakdown of the wound would not have happened and J would have avoided her injuries. The Defendant strongly denied the claim and said the surgeon's actions would be supported by a responsible

body of medical opinion. The Defendant also argued that carrying out an ileostomy would not have avoided the complications J suffered.

The settlement value reflected our assessment of the risks of the case. The award will enable J to move closer to her sister, in accommodation suitable to meet her needs and will provide J with additional care and support from a specialist brain injury care and case manager.

J's sister and Litigation Friend said:

*Our case was very complex and emotionally draining. Samantha Critchley and FFW proved to be our saving grace. There were never any false promises, we were always kept informed and Sam proved time and time again that she was experienced, skilful, compassionate, understanding and always the consummate professional. Everything was clearly explained with sound advice. Sam's detailed knowledge base resulted in a substantial settlement that will change my sister's life and provide her with future care. We cannot thank Sam enough for making a catastrophic event bearable.*

J's sister



# Oxford Radcliffe Hospital agrees £9.6m settlement for boy born with cerebral palsy



At around 34 weeks L's mother was concerned about a lack of fetal movement and so made an unscheduled visit to the ante-natal clinic.

A fetal heart test was performed at which time no fetal movement was felt. Notwithstanding that the machine was flashing "criteria not met", the midwife dismissed the lack of movement concerns and reassured L's mother that she and her baby were normal. Two days later she made another visit to the unit where she was treated in a similar fashion and made to feel "over anxious". No referral was made to an obstetrician. 15 days after registering her initial concern, L's mother again attended hospital on her own volition with further concerns. Within two hours of arriving in hospital she underwent an emergency caesarean section. Sadly, her son was born on 17 April in poor condition and subsequently developed cerebral palsy.

In 2007, L's parents instructed Paul McNeil who investigated the matter and found that the midwife failed to follow the hospital's own guidelines, particularly in failing to run the CTG for sufficient time, organise an ultrasound scan and to refer the mother to



*The fetal heart monitor was flashing "criteria not met".*

an obstetrician before discharge.

On this basis Paul argued that all responsible obstetricians would have ensured that careful monitoring of the pregnancy would have taken place in the 2 weeks before delivery. Applying the Dawes Redman criteria (operated by the hospital) would have established concerns about fetal wellbeing and that delivery would have been ordered before 17 April. In those circumstances L would have been born without disability.

Proceedings were issued on behalf of L and were initially strongly defended both in respect of breach of duty of care and causation of injury. Nevertheless, liability was finally admitted and a multi-million pound settlement was approved by Mr Justice Sweeney on 18 June 2012. L is now 8 years old and suffers from moderately severe cerebral palsy which affects his walking and his cognitive abilities. He will require 24 hour care and attention and the compensation will help him achieve his potential.

After the claim, L's father, praising Paul's efforts, said:

*"Thank you for the enormous amount of work that you have done to get us where we are today. This was a very humbling and emotional experience for both of us. Throughout the whole process from choosing 'the team' to instructing specialists your choices, advice and support have been exemplary."*



# Judge finds Royal National Orthopaedic Hospital negligent following spinal surgery



Rebecca was left quadriplegic and ventilator dependent as a result of an operation in January 2006, when aged 13, to correct the curvature of her spine. The operation was serious but relatively common.

Unfortunately, the surgery went badly wrong and she was left paralysed from the neck down. She now requires round-the-clock care from two carers for the rest of her life.

Rebecca was admitted to The Royal National Orthopaedic Hospital in 2006 to undergo an operation which was intended to correct the curvature of her spine (scoliosis), a condition which in her case was caused by a genetic condition - Prader-Willi Syndrome. Throughout the operation she was connected to a monitor to detect nerve signals in the spinal cord. The purpose of these signals was to alert the surgeon to the possibility that damage was being done to the spinal cord and to allow him to take remedial action to ensure that any such damage was not permanent.



*Rebecca was initially unable to move her arms.*

During the operation, the signals dropped significantly on two separate occasions. On the first occasion, the surgeon stopped the procedure, gave appropriate drugs and took steps to check whether the decline represented a technical fault with the equipment. Following this, the signals returned to an acceptable level and he continued the operation. When the signals dropped on the second occasion - this time by 80-90% - he chose to continue with the procedure without further pause. Tragically, and as a result of this failure, when Rebecca woke she was unable to move her arms. Over the following hours, the paralysis spread to her legs and then her chest until she was left quadriplegic and no longer able to breathe without a ventilator.

## History of the Claim

When Rebecca's parents, Andy and Julie Ling, first approached us in late 2006, her case seemed relatively straightforward. Why didn't the surgeon stop the procedure? If he had of done, surely all would have been well? What's the point of having spinal monitoring if the surgeon is just going to ignore it! However, the medical evidence that both sides obtained began to cast doubt on our initial thoughts.

Jonathan obtained reports from experts in seven specialities including spinal surgery, neurophysiology, neuroradiology, neurology and stroke medicine. It became clear that the complicating factor was that the site of the injury to her spinal cord. The injury had occurred above the site of the operation area. Moreover the injury had occurred in a different part of the cord to the area which was being monitored by the specialist equipment. If the injury occurred above the site of the operation, and the equipment was not monitoring the part of the cord that was injured, could it be said that the surgeon's failure

to heed the abnormalities had anything to do with her injuries at all?

After a great deal of painstaking work, Rebecca's team of experts came to the conclusion that her injury was probably caused as a result of movement of her spinal cord during the procedure, or disruption to the blood supply to the cord, or a mixture of the two. In any event, it was still the case that stopping the procedure when the signals dropped would have prevented Rebecca's injury. We sent a Letter of Claim to the Defendant on 8 July 2008 outlining our allegations and inviting them to accept liability. We did not receive a response. We served proceedings in August 2009 and when the Defence arrived on 3 June 2010 it became clear that the hospital intended to deny liability, not only arguing that it was not necessary for the surgeon to have stopped proceedings after the signal dropped for the second time but also that Rebecca's injuries were nothing to do with the operation or the abnormal signal, and were in fact a coincidence. A trial on liability only was listed for 23 January 2012.

The medical evidence evolved as further work was done by Rebecca's experts and it became necessary to serve amended and then re-amended Particulars of Claim in relation to the cause of the injury in February 2010 and again in April 2011. The Defendant of course had to respond to these new points, but they remained entirely unconvinced by the evidence we were putting forward. Their response was, put simply, that they did not know what caused Rebecca's paralysis, but it was nothing to do with their surgeon's actions.

In light of the Defendant's intransigence, Rebecca and her family understandably wanted matters finalised and we made an offer to accept liability on an 80% basis in May 2011. This was rejected. The experts met to discuss the case throughout Autumn 2011 following which we met with the lawyers for the Hospital to attempt to negotiate a

settlement on 5 December 2011. The Defendant's legal team arrived on the day with the message that they felt they were going to win at trial and that they would not make any offer to settle. Rebecca and her family had no choice but to proceed to trial.

Mr Justice McCombe at the Royal Courts of Justice heard the evidence over the 10-day trial which began on 23 January 2012. The medicine and anatomy were complex and led one of Rebecca's QC's to describe the case as "the most medically complicated that he had been involved in". Nevertheless, having heard all the evidence from the experts on both sides, the Judge held that the surgeon had been negligent in continuing to operate once the signals dropped so dramatically for the second time and that his negligence caused Rebecca's paralysis.

The judge summarised the findings on liability:

*"For my part, I cannot understand the logic of stopping the surgery the first time, observing a recovery of the traces after certain precautionary steps and after a pause for 20 minutes, and yet no pause (even for 5 minutes) when the traces reduced to 80/90%. At that stage the decision to continue was made in less than a second. Rather than providing a reason for continuing the operation, Mr Lehovsky's contention that he could not explain the loss of traces on either the first or the second occasion seems logically to call for precisely the opposite decision. Mr Webb's justification of the decision simply on the basis that Mr Lehovsky did not believe the traces is, to my mind, unacceptable."*

Following the Judgment, the Defendant made an application for permission to appeal. This was refused by Mr Justice McCombe at a Hearing on 28 May 2012. Despite this, the Defendant applied to the Court of Appeal for permission. Its application was turned down by a single Court of Appeal Judge on 13 November 2012 and again, for

the third and final time, by two Court of Appeal Judges at an Oral Hearing on 22 January 2013.

The Defendant has now, finally, fully accepted responsibility. It has agreed to pay an interim payment on account of damages of £500,000. This will allow Rebecca to afford the case management and care she so badly needs and reduce the burden that her parents have been shouldering for more than 7 years. She will also be able to start her search for an appropriate place to live.

Jonathan must now begin the complex task of working out exactly what Rebecca will need for the rest of her life. This task will involve reports from numerous experts in spinal injury, neurology, cardiology, endocrinology, care, accommodation, physiotherapy, and occupational therapy. Although Rebecca's case is not finalised, she and her family now know that she will be getting the compensation that she deserves which is likely to be several millions of pounds.

Julia Ling has this to say about Jonathan:

*"Jonathan has worked very closely with us and we are very happy with the service he has provided. He is very approachable and has involved helpful professionals in the duration of our case who were all very kind. If Jonathan wasn't available at the time we called, he would always contact us afterwards and was very informative."*



# Success against St Andrew's Hospital for complex regional pain syndrome

At the age of 47 Beverley underwent a prophylactic bilateral mastectomy as there was a history of breast cancer in her family.

The surgery was to be carried out at the St Andrew's centre for plastic surgery on 11 October 2007.

Technically the operation went very well and Beverley is very happy with the mastectomies. Both the cosmetic appearance and the avoidance of the possibility of breast cancer were very much appreciated. However, immediately following the surgery Beverley began to feel excruciating pain in her lower right leg and foot.

Her contemporaneous diary records after the surgery highlighted: *"Only aware of severe pain in my right leg/foot - all other pain insignificant. Leg/foot pain is unbearable - receiving pain relief on leg/foot pain. Seen by Registrar who explained that I came out from anaesthesia screaming with leg pain, and she had to physically restrain me as they were fearful that I would damage my (breast) flaps."*



*The defence said "nothing untoward was noted".*

In fact Beverley had suffered a devastating injury to her right lower limb as a result of poor positioning on the operation table. This caused complex regional pain syndrome with associated dystonia. It has given rise at times to unbearable neurogenic pain and dysaesthesia. There are also sensory changes and loss of feeling. There has been clawing of the toes of her foot and considerable disability and reduction in mobility. In an attempt to repair the nerve damage and reduce the pain levels Beverley was referred to a world class neuro-surgeon at the Charing Cross Hospital.

In December 2008 she underwent a decompression of the deep posterior compartment in her right lower leg. Further surgery was carried out in July 2009 and January 2011. Unfortunately, Beverley has been left severely debilitated by continuing, sometimes excruciating pain. She has been unable to return to full time work as a midwife and university lecturer. Her career plans have been severely curtailed.

The original operation was complicated and required Beverley to be in theatre for a period of nearly 11 hours. Unfortunately, as became clear in a subsequent investigation by the surgeon, it seems that Beverley was incorrectly positioned on the operating theatre table. As a result Beverley suffered a severe compression injury to her right lower limb. We argued on her behalf that the surgical team were negligent in failing to take any adequate precautions to ensure that her right lower limb did not sustain such an injury during the course of the operation.

Proceedings were commenced on Beverley's behalf in October 2010 and a defence served by the hospital indicated that *"her positioning during the operation was routine, nothing untoward was noted*

*to have occurred in the course of the surgery or anaesthetic, and no cause for localised pressure could be identified post operatively".*

This was contrary to the operating surgeon's view and put the hospital in a very difficult position. Soon after a series of questions were put to the surgeon in correspondence, liability was admitted and judgement entered for damages to be assessed on 15 November 2011.

A trial on quantum of damages was fixed for January 2013. After negotiations the matter was finally settled in the sum of £650,000 in November 2012. The bulk of the claim was for Beverley's ruined career but awards were also made for medical expenses, the cost of future care and Beverley's inability to undertake DIY and other tasks.

*Paul McNeil and his team were nothing more than 'Stonkingly Fabulous'! I needed a professional, kind, knowledgeable advocate to fight my corner and Paul stepped into the breach. He guided me through the process and provided a personal faultless and seamless service. Words can never thank him enough for his humanity, compassion, understanding, professionalism, empathy and overall care. The compensation that Paul secured for me has enabled me to build a future for my family.*



# £400,000 for GP's failure to refer diabetic causing blindness



**A GP failed to diagnose and treat Mr Ofori-Atta's diabetes for almost 6 years, even though there were test results clearly indicating that he was suffering from the disease.**

As a result of the delay, Mr Ofori-Atta suffered serious ophthalmic complications including diabetic retinopathy. He was left completely blind in his right eye and had severely impaired vision in his left.

In 2002 Mr Ofori-Atta's optician referred him to hospital with a diagnosis of cataracts and provided him with a hand-written letter to give to his GP. On both occasions however, his GP discarded the letters and told Mr Ofori-Atta that he did not have cataracts and that there was no need to refer him to hospital. He did not examine his eyes, nor did he take any notice of abnormal blood sugar results, which might also have led to the correct diagnosis.

Mr Ofori-Atta did not receive a hospital appointment until 2006 when he



*The GP ignored letters from the optician which recommended investigation for cataracts.*

.....  
was informed that he had diabetes and was suffering from diabetic eye disease. He underwent laser eye surgery in 2007 but his vision continued to deteriorate and by 2009 he had completely lost the vision in his right eye and only had partial vision in his left.

Jonathan obtained reports from experts in general practice, ophthalmic surgery, diabetes, care, technology, accommodation and psychiatry. He was able to successfully prove that Mr Ofori-Atta would have avoided the substantial loss of vision and the associated development of adjustment disorder and depression if standard procedures and practices had been followed.

The Defendant admitted liability but the parties could not agree on the extent of the injuries caused by the negligence.

After an initial offer of £160,000 was rejected, Jonathan managed to successfully negotiate settlement of £400,000.

Mr Ofori-Atta said after the case:

*I was completely satisfied with the service he provided. He kept me fully updated at all times and was always available when I needed someone to talk to. I was very impressed with his manner and experience and was very pleased with the overall outcome of the case. I would recommend his services to anyone who has suffered like I have.*

# Princess Alexandra Hospital admits liability in obstetric negligence claim



Sadly Louis now suffers from cerebral palsy caused by lack of oxygen during the late stages of labour. He is now three years old and he has significant physical difficulties. It is too early to establish the extent, if any, of his cognitive disabilities.

The circumstances of his birth were that his mother was 40 weeks pregnant and in the early stages of labour. On admission to the hospital it was confirmed that her baby was in excellent condition. At around 2am on Monday 18 May 2009 there was a significant change in the fetal heart representing serious danger to the baby. This went unrecognised by the attending midwife. The Registrar was not called for 25 minutes. He was probably given the wrong information about the fetal condition. Instead of attending himself he sent a junior doctor who compounded the earlier mistakes by failing to recognise the abnormalities on the fetal heart monitor. After about 2:40 AM it became apparent that the fetal heart was extremely worrying. Another midwife recognised this and called the Registrar to attend as an emergency. The Registrar immediately recognised that the fetus was in distress and ordered a Caesarean section; but crucially this was 50 minutes after the abnormalities had begun. At birth (3:11 AM), he was in a pretty poor condition caused by the lack of oxygen to his brain. This would have been avoided had the abnormal trace been recognised earlier and delivery expedited.



*Even though the inquiry was so damning the hospital did not accept legal responsibility.*

The hospital conducted an inquiry immediately afterwards and its findings were that there was inadequate fetal heart monitoring, that the midwife did not communicate effectively with the Registrar, that the junior doctor had interpreted the CTG inaccurately and proposed an inadequate management plan. All this led to a delay in Louis' delivery.

Even though the inquiry was so damning the hospital did not accept legal responsibility. We were instructed in the summer of 2009 and investigated the claim given that the hospital had decided not to accept responsibility. Unsurprisingly we received strong support from the obstetric and midwifery experts we instructed. Proceedings were issued on 14 March 2012. The defendants continued their stance in the legal proceedings.

Later Princess Alexandra Hospital admitted breach of duty of care but not that the delay in delivering had caused or contributed to the disability. A trial date on liability only was fixed for 18 March 2013. With the pressure of trial and the need to exchange expert evidence the defendants finally admitted liability and judgement was entered

for damages to be assessed on 28 November 2012.

At the same time the defendants agreed to pay an initial interim payment in the sum of £150,000 which will enable the family to rent suitable accommodation in the short term and to obtain the best care and therapies. In addition the defendants accepted the mother's claim for psychiatric injury and this was settled in the sum of £35,000. The assessment of Louis' claim will take place sometime after the claimant's assessment of 5th birthday when his prognosis is better known.

After the case his father Michael said:

*Just three years ago our son through Medical Negligence was born with the cerebral palsy. We were made aware of Paul McNeil by a friend and from the first meeting with Paul he gave us all the advice we needed and reassured us that he would do all he can. Well, what Paul says - he does. It's been a long three years but made so much easier by having Paul on our side, always willing to talk on the phone to the point where he has spoken to us on his holiday. Paul and Field Fisher Waterhouse are outstanding at what they do and were outstanding in winning our case. I would have no hesitation whatsoever to recommending him and his firm. ||*



# Barnet Hospital's poor nursing care causes infection and need for heart bypass surgery

10

Mehmet fell from a step ladder and banged his head. He was taken to Barnet Hospital and was diagnosed as having suffered a small bleed in his brain.

Subsequently, the bleed was treated surgically at the Royal Free Hospital, without complication.

During his admission to Barnet Hospital, Mehmet was subjected to serious failings in very basic nursing care and hygiene. A cannula (a tube via a needle) was inserted into Mehmet's right and left wrists through which fluids and medication could be introduced into him. As a result of poor nursing care the cannula sites became infected with MRSA, which went undiagnosed and untreated.

The allegations of negligence included that the nurse did not wash her hands before inserting the cannulas, or wear gloves, and did not subsequently check the cannula sites in his wrists for signs of infection and cleanliness. Unfortunately, as a result of these failings, bacterial infection developed in both wrists which were not diagnosed or acted upon, even though Mehmet's ex-wife informed the nurses more than once that the sites looked infected



*Mehmet was subjected to serious failings in nursing care.*

and were smelly. The care taken of the cannula sites did not comply with Barnet Hospital's own policy relating to cannulas. The hospital had come under similar criticism previously in the press.

The infection continued to get worse, and Mehmet became progressively unwell with fever, drowsiness and disorientation. Still no recognition, investigation or treatment was made, and he was later transferred to the Royal Free Hospital. Very quickly after arrival, he was diagnosed with MRSA infection and seen to have abscesses and cellulitis at both cannula sites. He was extremely ill.

Mehmet had undergone heart valve replacement surgery many years earlier. Sadly, because the MRSA had been left untreated, it had spread to his heart and seriously damaged the heart valve. He had to undergo urgent heart surgery to replace the valve. His recovery was slow and difficult.

At the time of the negligent treatment,

Mehmet was still working as an electrician. However, even if he had not had the MRSA infection, he would probably have only been able to work for a few more years because of his pre-existing heart problem.

Mehmet instructed medical negligence specialist and Partner, Edwina Rawson. The defendant, Barnet & Chase Farm Hospital NHS Trust, admitted negligence. Causation was denied, arguing that even if the infection had been identified, earlier treatment with antibiotics would not have prevented the spread. However, the claim settled successfully for £210,000.

Mehmet confirmed that the outcome exceeded his expectations and had this to say about Edwina;

*Edwina did a brilliant job in dealing with my case, with total professionalism and legal skill. She relentlessly pushed the case forward to reach a successful conclusion. She was brave and did not give up. She was also compassionate, and genuinely cared about me and the outcome.*





# “Wrongful birth” arising from mistake by Oxford genetics laboratory



In August 2006, the family's third child died as a result of an inherited muscle wasting condition called Spinal Muscular Atrophy (SMA) (although this went unrecognised at the time).

The baby was just four months old. Following his untimely death, genetic testing was carried out at the John Radcliffe Hospital in Oxford to establish the precise cause of his demise and to counsel the parents on the potential risks of future pregnancies.

The relevant material was obtained but the analysis of the results was carried out on the false assumption that the parents were first cousins. Mistakenly, it was concluded that the genetic results did not indicate that the deceased child had SMA when in fact he did.

In April 2007, the parents were informed that: *“All these tests do not exclude the possibility of it still being Spinal Muscular Atrophy or SMARDI 100% but it makes it very unlikely.”*

Crucially they were told that there was only a 1 in 4 chance that a subsequent baby would be born with a similar condition and that there was no available diagnostic testing pre-natally.



*A claim was made for the “wrongful birth” of the youngest child on the basis of negligence.*

Obviously, the parents were very comforted by this advice and decided to try for another child.

The following pregnancy was difficult for the mother as she was very worried (there being no genetic testing) but ultimately trusted the geneticist's advice. Their son was born in the Summer of 2008 and it soon became clear that he was suffering from a similar condition to his deceased brother. Genetic testing performed at another hospital confirmed that he suffered from SMA.

The Oxford Radcliffe Hospital immediately instituted an inquiry and quickly established that SMA was present in the younger, deceased child and it was noted in a letter to the parents that: *“Potentially with further investigations, the diagnosis of SMA would have been confirmed, and we could then have arranged for you to be seen to discuss pre-implantation genetic diagnosis prior to another pregnancy.”*

Sadly, the youngest child died on 23 February 2009.

A claim was made for the “wrongful birth” of the youngest child on the basis of negligence as his SMA would have been diagnosed by pre genetic testing. In addition a claim was made for the psychiatric damage suffered by both parents.

Soon after we were instructed, Oxford Radcliffe Hospitals NHS Trust admitted liability and the only issue was the amount of damages. The mother in particular had suffered very significantly and her condition at the time of the settlement was characterised by anxiety, depression, anhedonia, disruption of sleep, appetite, libido and reduced mental and physical energy. She suffered from a major depressive episode of moderate severity and had not been able to return to work. Her prognosis was guarded.

Proceedings were issued on 7 February 2012 and the case was eventually settled for a six figure sum in March 2012.

# Drug trial negligence at Royal Marsden Hospital leads to death of young father

Gareth died of a condition known as bleomycin toxicity, severe lung damage caused by the chemotherapy drug bleomycin that was administered along with other chemotherapy drugs as part of a clinical trial.

Gareth was diagnosed with testicular cancer in July 2006 and commenced treatment at the Royal Marsden Hospital in August 2006. The trial, called TE23, was evaluating whether a combination of five existing chemotherapy drugs was better at treating testicular cancer than the standard treatment of three drugs.

During treatment, Gareth developed a dry cough, a symptom of lung damage, caused by bleomycin. A chest x-ray on 17 October 2006 also revealed changes consistent with bleomycin toxicity. These symptoms were not considered by medical staff at the hospital to be signs of bleomycin toxicity and so bleomycin continued to be administered for a further four weeks. Gareth died on 29 December 2006.

Mark was instructed by Victoria Kingdon, Gareth's widow, after she had heard about his work acting for the family of Gary Foster who also suffered from testicular cancer and who also died after taking part in the TE23 drug trial.



*During treatment, Gareth developed a dry cough.*

Mark argued that if the abnormal findings of the chest x-rays and Gareth's cough had been identified as being signs consistent with bleomycin toxicity, the bleomycin would not have continued to be administered and appropriate treatment could have been given. By stopping the bleomycin at this time, Gareth would only have received 225,000 units of Bleomycin, instead of the 300,000 units he went on to receive in total. This was important as one of the largest studies into the effects of bleomycin, itself conducted at The Marsden, had shown that the lowest fatal dose of bleomycin was 290,000 units.

The Royal Marsden issued a letter of apology to Victoria Kingdon but did not admit liability in the case. At a settlement meeting the hospital agreed to pay Mrs Kingdon £150,000, an award that was approved by the High Court. Praising Mark's handling of the case, she said:

*When my husband died I spent two years collecting information and letters from the hospital that treated him, convinced that something had gone wrong. I read about Mark Bowman in the newspaper where he was credited for arguing a case similar to ours. The day I handed over all my paperwork to him a huge weight was lifted from my shoulders. He brought order to the stacks of paperwork and chronology to events, he hired experts who helped to identify the errors in the system that had led to my husband's death, and he was always patient and willing to explain every detail. He understood my concerns from the outset and guided the process to reach the outcome I wanted: An apology. Mark has the energy of youth coupled with the wisdom of experience, a potent combination in any profession. I cannot think of a better partner to have had at my side. //*



# £9m midwifery claim against Hospital in Cambridge enables dream of Gold Medal

After an uncomplicated pregnancy the claimant's mother attended Addenbrooke's Hospital on 22 May 2005. She was admitted and a CTG was performed to assess fetal well-being.

There were concerns about decelerations and an artificial rupture of the membranes was performed revealing meconium stained liquor. In fact, the CTG showed a pathological trace and this combined with the meconium stained liquor should have raised serious concerns.

An obstetrician was called and fetal blood sampling was undertaken after a significant delay. Moreover, the obstetrician incorrectly categorised the CTG as "suspicious" rather than "pathological". Another fetal blood sample was ordered and unsurprisingly showed a worrying increase in acidosis. We alleged that the pathological CTG, the meconium staining and the increase in acidosis were all signs that all responsible obstetricians should have taken immediate action to deliver the baby by 15:45 hours at the latest.

In fact the mother was ordered to start pushing and it was not until 15:37 hours that the CTG was finally recognised, by the obstetric team, to be pathologically abnormal.

At 15:48 hours a decision was made to perform a caesarean section and the baby was delivered at 16:45 hours with the use of forceps.

Our case was that the decision to delivery interval was too long and longer than the hospital's own Guidelines for Fetal Monitoring in High Risk Pregnancies and Labour. We also argued that it was a mistake to try to deliver by forceps rather than proceeding directly to a caesarean section. There was very strong evidence to suggest that the hypoxic injury to the baby occurred in the last 20-25 mins of the labour because of her condition at birth and the evidence in the MRI scans.



*Mr Justice Stuart Smith commended the care given by the parents.*

The claimant now suffers from choreoathetoid quadriplegic cerebral palsy with some spastic features. Physically she is significantly disabled although cognitively her intelligence has been largely spared.

We were instructed in late 2007 and a consultant obstetrician, a neonatologist and a neuro-radiologist were engaged to assist our investigation. A letter of claim was dispatched in September 2009. The defendants denied liability arguing that all the decisions taken by the obstetric team were reasonable except for the management of the forceps delivery. The defendants also rejected that the injuries occurred in the last 20-25 minutes of the labour. On the defendant's case the hypoxic injury began as late as 16:41 hours. Indeed it was contended in the defence that the delivery should have been only 4 minutes earlier and that if this had occurred the resultant neurological injury in comparison to the actual outcome would have been "very small" indeed.

The court ordered that a "split trial" liability/quantum should take place and eventually the case was settled on a 100% basis (notwithstanding the defendant's legal and medical arguments) in February 2011.

Substantial interim payments were made to cover the costs of care, case management and therapies (in particular speech and language and physiotherapy). We then began to investigate the value of the claim instructing a raft of experts from an educational psychologist through to an architect. We finally produced our schedule of damages which valued the claim at over £12 million. The counter schedule amounted to a mere £5 million. However, the

parties were able to discuss at a round table meeting in September 2012 and the matter was settled subject to the approval of the court. The court approved the outcome on the 15 October 2012. Mr Justice Stuart Smith commended the care given to the claimant by her parents to date. The settlement will allow the claimant to reach her fullest potential and enable her to purchase accommodation to house carers and maybe to fulfil her dream to become an Olympic dressage gold medallist!







“ Paul was extremely professional, he was with us at all times throughout the process. He recommended expert barristers, physiotherapists, case management companies and carers, all of which have gone some way to improving our daughters day-to-day-life. ”

## Forceps left inside patient after routine operation at Newham Hospital



Mark Bowman acted for Davina in a claim for medical negligence against Newham University Hospital NHS Trust. Mark recovered compensation on behalf of his client after a surgeon left a pair of forceps inside her abdomen after a routine operation.

On 4 March 2009 Davina attended Newham General Hospital for repair of a vaginal fistula. Post operatively, she suffered from extreme and debilitating abdominal pain, increased heart rate and high temperature. She was assured that she was suffering from regular post operative symptoms and was discharged home.

Davina's symptoms continued until 10 March 2009 when an abdominal x-ray was performed which revealed that a set of 15cm long surgical forceps had been left inside her abdomen in the operation some 6 days earlier. Open surgery was therefore required, during which it was noted that Davina's sigmoid colon had been perforated and that there was damage to her small bowel.



*Davina required regular out-patient follow ups.*

Davina remained an inpatient for a further 10 days, before eventually being discharged from hospital on 20 March 2009. Davina required regular out-patient follow ups and continued to suffer from ongoing physical symptoms as well as emotional symptoms as a result of the trauma that she went through.

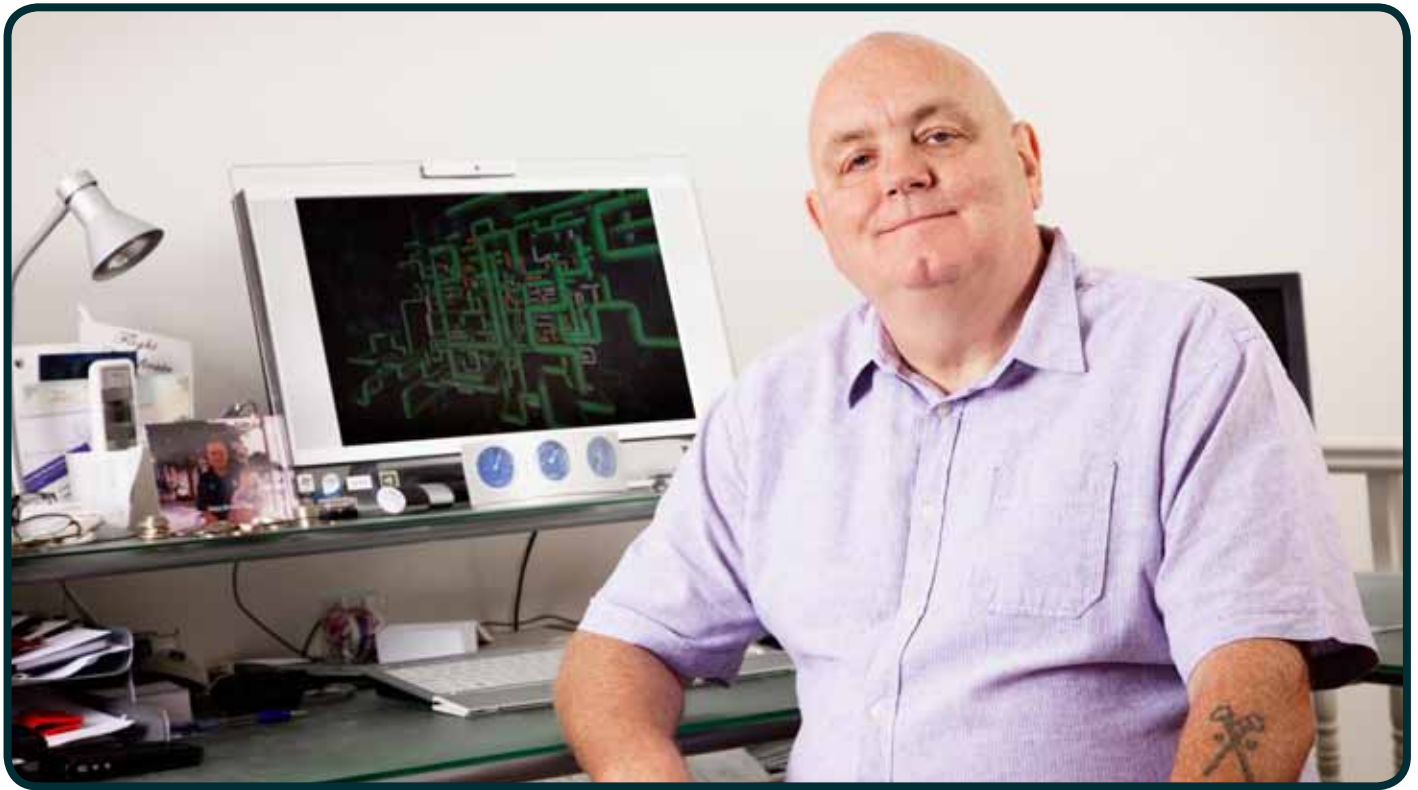
Davina instructed Mark Bowman to pursue a claim. Proceedings were issued against Newham University Hospital NHS Trust and liability was admitted. Following receipt of a report from a general surgical expert, the claim settled and Davina received substantial compensation for her pain and suffering as well as the expenses she incurred as a result of her treatment.

After the case Davina said:

*“ This traumatic episode has left me still in urgent need of counselling but, through my misfortune, Newham Hospital have gone to great pains to put new checking procedures in place to try to eliminate such a distressing experience on future patients. Mark Bowman at Field Fisher Waterhouse has been thorough and attentive throughout my case. ”*



# Orthopaedic negligence at Royal London Hospital leads to permanent shoulder pain



Stephen was sitting in a Plaza on holiday in Sicily, when he was hit hard on his right dominant shoulder with a metal pole in a random attack.

He suffered a severe injury to his shoulder and was advised to return home immediately for treatment. He attended the A&E department at the Royal London Hospital, where he subsequently underwent surgery by an orthopaedic surgeon.

The surgery was not successful, and Stephen was left with limited mobility. His shoulder was stiff and he could not rotate it. This impacted not only on his shoulder, but also on the use of his arm. He was in a great deal of pain.

Stephen was concerned about the outcome and obtained a second opinion privately. This concluded that he had a serious problem as a result of the surgery (rather than the initial injury). Part of the shoulder known as the greater tuberosity and rotator cuff had not been treated properly during surgery, and as a consequence his shoulder was 'blocked' from moving



*The initial surgery was not successful.*

properly. He underwent corrective surgery which was performed well, but was not successful. He subsequently underwent a total shoulder replacement, but was still left with difficulties and pain.

The allegations of negligence centred around the performance of the initial shoulder surgery and follow-up. They included that the greater tuberosity and rotator cuff had not been reduced during surgery; that there had been a failure to take adequate imaging in the post-surgery period; that there had been a failure to monitor Stephen properly after surgery; and a failure to take him in for revision surgery to correct the failings. If proper treatment had been provided, Stephen would have had a considerably better outcome although he would have had some shoulder limitations in any event.

Stephen instructed Edwina Rawson. The defendant admitted liability, but argued that he would have had significantly greater difficulties in any event than we had suggested. A successful settlement was reached in the sum of £500,000.

Stephen, in praising Edwina's handling of the case, said:

*/// A massive thank you for getting me the settlement. You stuck in there and kept the case alive, plus you made me feel very special. This settlement is a life-changer. I had no hope and was feeling really down. Now my family and I have a very bright future. ///*



# King's College Hospital injures architect after liver re-transplantation surgery



On Tuesday 17 March 2009 Damian was admitted to King's College Hospital so that he could undergo liver re-transplantation surgery. The surgery was successful and after spending some time in the intensive care unit Damian was transferred to the ward.

On Monday 23 March 2009 a nurse was asked to remove a central line (this is an intravenous catheter placed at the time of transplant in the front of the chest). The agency nurse who conducted this procedure did so whilst Damian was in an upright position. A subsequent note from her mentioned she *"had not removed one before"*. In a statement Damian described the immediate aftermath as follows:

*"A moment later I heard a gurgling sound and simultaneously felt the sensation of air going into my vein. My head dropped and I instantly realised that this was serious. I felt I was dying and said so. I must have blacked out because the next thing I remember was having an oxygen mask on my face and the sound of different voices."*

In fact the central line should have been removed whilst Damian was in the supine position. The defendant admitted this in an open letter in June 2010 after we had been instructed. Sadly, the negligence resulted in an injury to Damian's brain - in the form of hypoxic brain damage in the watershed



*Damian is married and the father of twin boys.*

regions. In addition Damian suffered visual deficit, severe upper and lower limb dysfunction with spasms and spasticity. As a result Damian has severe difficulties in walking, instability and weakness of the pelvis and significant pain and fatigue. Damian is married and the father of twin boys who were born a few days before the liver surgery. He worked internationally as an architect on high profile cases for Foster + Partners. Damian suffered from a number of underlying conditions which had necessitated the liver re-transplantation in the first place. Nevertheless, the injuries he received on 23 March 2009 were devastating and ended Damian's career as an architect. He now requires significant support from carers and his family as well as many therapists to maximise his physical condition. Cognitively Damian has done exceptionally well.

Proceedings were issued on his behalf in May 2011 and a trial was fixed for 21 November 2012. The defence served by King's College Hospital admitted liability and the trial was limited to the amount of compensation that Damian should recover. We obtained reports from many specialisms' including neurology, hepatology,

neuro psychology, psychiatry, care, occupational therapy, accommodation and physiotherapy. We also obtained interim payments on account of damages so as to fund care, case management and the ongoing provision of therapies.

Negotiations took place between the parties' lawyers and a settlement was agreed in November 2012 just before the date for trial. Substantial damages were awarded to Damian both as a conventional lump sum and periodical payments to cover Damian's ongoing need for care.

After the case Damian said:

*"It was a real pleasure to meet Paul; he is a warm, empathic individual who exuded trustworthiness and confidence. Throughout the process my wife and I were completely reassured knowing that he was fighting my corner, whilst at the same time appreciated him shielding us from the unavoidable stresses of a legal battle.*

*The final outcome of the case means that, although I still have to contend with the daily challenge of living with disability and pain, without the fulfilment that comes from working as an architect, I now have the resources and support I need to help me, as a husband and father, to strive towards making our family life as fulfilling as possible. Paul has given us all hope of a future."*

# Meet the team



**Paul McNeil**  
Partner

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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.



**Mark Bowman**  
Partner

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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).



**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.



**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.



**Manori Wellington**  
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Manori Wellington has specialised in claimant medical negligence claims for over 15 years. She is a member of both the AvMA and Law Society clinical negligence panels. She has recently joined the FFW medical negligence claims team.



**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.

“The group is praised for its commitment to “demystifying the legal process,” while this is a firm for which “client care has always been a priority.” Market sources also regard its conduct as “excellent: very personable and professional, experienced and compassionate.”

Chambers UK, 2013

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