

## SIMON WHEATLEY

Year of call  
1979



Simon Wheatley's principle area of practice is maximum severity claims, including brain damage cases and traumatic amputation of limbs.

In Clinical Negligence, Simon specialises in claims involving injury at birth, failure to diagnose, failure to inform, and a variety of procedures including laparotomy and laparoscopy. He is also instructed in product liability cases which concern medical products.

Simon undertakes a range of Personal Injury work that range from injuries at a chemical plant to catastrophic road traffic cases. He is experienced with working with the consequences of head injuries, including resolving the problems caused by misdiagnosis and/or misunderstanding of the significance of head injuries.

Simon also appears in the Court of Protection, dealing with the ramifications particularly of the Mental Capacity Act 2005.

He is highly regarded for his expertise in military claims, such as injuries and the calculation of loss of career prospects.

Simon is a trained Assistant Judge Advocate and has sat on Court Martials in the UK and Germany.

## LEGAL EXPERTISE

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### Clinical Negligence

Simon specialises in all claims for Clinical Negligence. In the last year these have included birth injury claims, failed plastic surgery outcomes, failure to diagnose, failure to inform, and a variety of procedures including heart surgery.

He is presently instructed in a large number of damage at birth claims, including fetal injury and shoulder dystocia claims.

As a subset of the birth injury claims, Simon is involved in a number of maternal claims for damages arising out of torn genitalia.

## Selected Cases

### CM & Kingston Hospital NHS Foundation Trust

The Claimant's father died of cancer. Following a similar diagnosis, C, aged 40 became depressed, suicidal and was admitted to a secure unit. However, she was permitted to leave the unit and having done so, then attempted to commit suicide at Kingston train station. She failed to take her life, but the train amputated both her legs. Liability admitted but the case is proceeding to a contested hearing on the value of the claim. Recently, an application for an interim payment in £1M was approved by the court.

### Peter Lowther (A protected party, by his wife and litigation friend Wendy Lowther) v Clifford Barlow (1), Spire Health Care (2) Paul Diprose (3)

Settled in the Claimant's favour for £700,000. The Claimant was aged 65½ when he underwent a mitral valve repair of his heart. Apart from his cardiology, he was otherwise well at the start of the operation. However, following the procedure, he was found to have sustained a stroke that caused persisting memory and concentration difficulties. According to the operation note, the surgeon discovered air in the left side of the Claimant's heart when he opened up the chest at the start of the operation. All the experts agreed that air should not have been present in the heart. However, no one could explain where the air bubbles had come from, and all the clinicians denied all responsibility. Action brought by Claimant's wife against the surgeon, perfusionist, and the anaesthetist. Settled following RTM.

### Bonita Lonsdale v Yorkshire Ambulance Service NHS Trust

Settled in the Claimant's favour for £750,000 including costs. The Claimant alleged that an ambulanceman roughly pulled her upwards by the arms from a sitting position, when she was 31 weeks pregnant, recovering from a seizure and had been diagnosed with a spinal stenosis. Claimant alleged wholesale loss of function and damage to her life in general. Breach of duty was admitted, but causation and damage was challenged on the basis that (a) The Claimant had a pre-existing injury to her neck/spine, and (b) She was likely to have injured herself when she fell prior to the ambulanceman's involvement. The interest in the case lay in the difficulty for the neuro-surgeon's to identify what injury she sustained and when. Settled at a mediation.

### Jacqueline Smith v Brighton and Sussex University Hospitals NHS Trust (2018)

Settled in the Claimant's favour for £410,000. The claimant, a 49-year-old woman, sustained effective loss of vision in the left eye following a delay in diagnosing her acute glaucoma. The initial diagnosis was of conjunctivitis. The following day a CT venogram was carried out and the results were reported as being within normal limits. C was transferred to an eye hospital where she was diagnosed as suffering from acute

glaucoma. On 12 November, C underwent a trabeculectomy to remove the eye's trabecular to relieve intraocular pressure. However, she lost all effective sight in the left eye. She became unable to drive, her interior design business was affected and she also experienced a loss of confidence. Liability admitted in part. D admitted breach of duty but disputed causation and whether C would have regained full sight if she had received prompt and appropriate treatment.

### Jennifer Laxton v University College of London NHS Foundation Trust

Settled for £50,000. Damage to genitalia case following delivery by forceps. The Claimant had issued clear instructions that she did not want to undergo forceps delivery. Her labour and delivery proceeded to plan. However, she experienced a prolonged second stage of labour and the obstetrician made a decision to administer syntocinon. Thereafter the CTG scan was noted to be suspicious and the attending doctor decided that a trial of instrumentation should be attempted i.e. forceps. This was precisely the method of delivery the Claimant had indicated she did not want. She did not receive proper information about the risks of instrumentation compared to birth by Caesarean Section. Because she was provided with no other option but to consent to forceps delivery, she agreed to undergo such delivery but in the circumstances her consent was neither informed nor freely given. C was left with extensive injuries, including damage to the external sphincter (a 3a tear) and consequential urinary and bowel symptoms. The Defendant contested breach of duty on the basis that they were compelled to use forceps in the circumstances of the birth, and that it was neither possible nor advisable to follow the birth plan.

### Chhaya Givane v Newham University Hospital NHS Trust

Settled in Claimant's favour for £200,000. The claimant, a 36-year-old woman, received £200,000, for the fourth-degree tear sustained when she gave birth to her child in August 2004. She suffered permanent anal incontinence which resulted in her being almost housebound and relying on care and assistance from other people. Clinical Negligence: On August 3, 2004, the claimant (C) attended a hospital of the defendant trust (D) for the birth of her second child. At 14.00 her waters broke but, despite her husband's requests, C was left unattended. At 19.00, C felt an overwhelming urge to push and was aware that she was about to give birth imminently. Her husband saw the baby's head and asked for assistance. The midwives arrived and rushed C to the delivery suite which had not been cleaned since the previous patient had been treated there. C's baby was born at 19.10, within 10 minutes of arriving in the suite. During delivery, C suffered a fourth degree tear, lost a lot of blood and had to be sutured in theatre. C remained on the post-natal ward as an inpatient for approximately eight days after giving birth but during that period she caught an infection. C sustained injury and brought an action against D alleging that it was negligent in mismanaging the delivery. C alleged that that mismanagement caused her to suffer the tear. Liability disputed. D argued that the tear was caused by the rapid progress of C's labour. Injuries: C suffered a fourth degree tear during delivery. Effects: C suffered an anoperineal fistula and anal incontinence. In April 2007 a fistula repair was attempted but was unsuccessful. The incontinence meant that C was virtually housebound and she relied on care and assistance from other people. The experience of the delivery also caused C to suffer from depression and to experience difficulty bonding with her child. Prognosis: C was expected to suffer some anal incontinence for the remainder of her life.

## Wayne Williams v St George's Healthcare NHS Trust

The claimant, a 40-year-old man, received £350,000 after a hospital left what was believed to be part of a latex glove inside him whilst performing a tracheotomy in October 2006. He lost his job and suffered a handicap on the labour market, was susceptible to chest infections and had to undergo a further, permanent, tracheotomy which caused him embarrassment. Clinical Negligence: On October 18, 2006, the claimant (C) underwent a tracheotomy at a hospital of the defendant trust (D). On December 7, 2006, he was discharged from hospital. However, six days later, C attended D's accident and emergency department complaining of increased shortness of breath. C subsequently underwent a further tracheotomy. On February 7, 2007, he was discharged from hospital with the tracheotomy in situ. In April 2008, C consulted an ear nose and throat consultant and was advised that a foreign object had been found in the course of the second tracheotomy, which was thought to be a piece of latex glove. C sustained injury and brought an action against D alleging that it was negligent in causing a foreign body (the glove) to be left in the operation site during the first operation, and further-more failing to communicate to C that the foreign body had been left in the operation site when that was discovered during the second tracheotomy. Liability admitted. D argued that, even without the tracheotomy, C would not have worked beyond the age of 50 and would have been unlikely to have survived beyond 65 years old due to his pre existing morbid obesity. Injuries: A piece of latex glove was left inside C during both tracheotomies.

## Personal Injury

Simon specialises in all claims for maximum severity injury, including motor bicycle accidents and fatal accident claims.

He has developed a specialism in amputation claims and the specific demands in terms of valuation of those claims.

In addition, he represents Claimants in military claims, particularly injuries on the range and during live-firing exercises.

## Selected Cases

### Shirley Rose Church v Thompson Holidays (now TUI UK)

The claimant, a 68 year old woman, booked to go on holiday with her husband. They asked the travel agent to find somewhere peaceful. However, they were sold a holiday to Tunisia at the time when there was an escalating level of political unrest, terrorism and violence. Shortly after they arrived at the beach resort, a lone gunman entered the premises armed with grenades and an assault rifle. In the mayhem, C received gunshot wounds which have resulted in the loss of her leg, and her husband has been left with psychiatric damage. Liability denied. The inquest into the deaths has been heard but the personal injury action is about to commence. The case has been assigned as a class action, and the first hearing is likely to occur in September.

### Ernest Sakyi (a patient by his father and litigation friend Mr Gabriel Sakyi) v Martin Preston

Settled in the Claimant's favour for £3.5million. This was a road traffic accident that occurred on 31 December. The Defendant was driving through Hemel Hempstead when the Claimant, a 24 year old Ghanaian, walked out into traffic and sustained serious head injuries. Observers to the accident initially stated that the car was driven without headlights; however, analysis of the CCTV indicated that was wrong and they retracted their statements. C couldn't provide any information as to why he walked out into traffic due to his head injuries, and liability was settled at 70% in C's favour. There then followed valuation reports and the case settled on large claims for loss of earnings and continued care. A lump sum was agreed, rather than PPO's to give C maximum versatility in the application of his damages.

### Kathleen Hay (Administrator of the estate of James Robert Hay), Susan Hay v Norman Bentley

Settled for £700,000. The deceased was aged 30 at the time that the Defendant drove his car into collision with him, forcing him against the motorway barrier and causing him to be thrown from his motorbike, causing death. Liability admitted. Various claims for multiple dependents and extensive arguments about what the deceased would have received by way of income, since although he was training to be a plumber he was out of work at the time.

### Kwame Achempong and Others v Ministry of Defence

This claim (and about 30 others) involves soldiers from Commonwealth countries, typically Nigeria, who were exposed to non-freezing conditions (on Salisbury Plain and elsewhere) and then develop a continuing cold response in feet, toes, hands and fingers. This leads to an inability to carry on active service, and dismissal from military service. The continuing losses include restrictions in working in outdoor settings or in cold warehouses.

## Appointments

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- Assistant Judge Advocate

## Memberships

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- AVMA
- PIBA