

Paul v Royal Wolverhampton NHS Trust [2024] UKSC 1

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Introduction

1. On 11 January 2024, the much anticipated Judgment in the case of *Paul v Royal Wolverhampton NHS Trust*¹ was handed down by the Supreme Court, marking a significant turning point in the landscape of secondary victim claims within the context of clinical negligence. This landmark Judgment, with a majority of 6-1, has far-reaching implications. It significantly limits the ability of secondary victims to seek compensation for psychiatric injury arising from medical negligence, save for extraordinarily rare scenarios.
2. The decision concludes a 30-year debate, overturning the often used precedent (by Claimants) set by *North Glamorgan NHS Trust v Walters* [2002] EWCA Civ 1972. However, the Judgment also provides a welcome clarification to concepts including the classification of secondary victim claims, accidents, temporal proximity and the flawed semantics behind a “*horrifying event*.”² Ironically, it arguably broadens the parameters for secondary victim recovery in a non-clinical setting.

Factual Background:

3. The claims in question, Paul, Polmear, and Purchase all shared a common thread. The manifestation of a “*horrifying event*” was not synchronous with the alleged negligence of the treating clinician. The Claimants, comprising family members who witnessed the distressing circumstances surrounding the death of their loved ones, sought damages for psychiatric injuries resulting from clinical negligence.

Paul: the Claimants were two daughters who witnessed their father die on the street from cardiac arrest. It was argued by the Claimants that the Defendant was negligent in failing to arrange coronary angiography some

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² *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 AC 310 Ward LJ [20]

14 months earlier, which would have revealed his treatable coronary artery disease.

Polmear: the Claimants were parents who witnessed the death of their young daughter on 1 July 2015. They argue that had her daughter been given a proper diagnosis of pulmonary veno-occlusive disease relating to her distressing symptoms and strange episodes weeks before, she would not have collapsed and died that day.

Purchase: the Claimant came upon her daughter, Evelyn Purchase, a few minutes after her death from pneumonia on 7 April 2013. The Claimant argued that the Defendant negligently failed to treat Evelyn's symptoms three days earlier on 4 April 2014, when she presented with symptoms of weakness, dizziness and difficulty in breathing.

Court of Appeal Judgment:

4. The Court of Appeal, relying on *Taylor v Novo* [2013] EWCA Civ 194, [2014] QB 150, dismissed all three claims. In *Novo*, Mrs Taylor sustained injuries in an accident at work when a stack of racking boards fell on top of her. Three weeks later, she collapsed and died at home. Her death was caused by a pulmonary embolism resulting from deep vein thrombosis which was due to the injuries she sustained at work. The Claimant did not see the accident but witnessed his mother's death and developed post-traumatic stress disorder.
5. While Underhill LJ and Sir Geoffrey Vos MR expressed reservations about the applicability of *Novo*, they felt constrained by its authority, emphasising the necessity of a temporal connection between the negligent act and the subsequent manifestation of harm. This decision cast a shadow over numerous secondary victim claims, disallowing a "gap in space and time"³ that proved challenging for subsequent Claimants to overcome. This was particularly so for medical negligence cases, given that the lag between a clinician's misdiagnosis and manifestation of harm is almost always temporally separated.

³ *Taylor v Novo* [2013] EWCA Civ 194, [2014] QB 150 [80]

The Supreme Court's Decision

6. The crux of the Supreme Court's decision in *Paul v Wolverhampton NHS Trust* lies in its reevaluation of the responsibilities of medical practitioners and the nature of care they provide. The Supreme Court expressed that medical practitioners' duty of care does not extend to protecting close family members from the traumatic experience of witnessing the death or manifestation of disease or injury in their relative. This decision, according to the Supreme Court, aligns with the current state of society and the perceived nature and scope of the medical profession's role:

*"It cannot be said that a doctor who treats a patient thereby enters into a doctor-patient relationship with any member of the patient's family and thereby assumes responsibility for their health...We are not able to accept that the responsibilities of a medical practitioner, and the purposes for which care is provided, extend to protecting members of the patient's close family from exposure to the traumatic experience of witnessing the death or manifestation of disease or injury to their relative."*⁴

7. The Supreme Court has effectively introduced a new conceptualisation of secondary victim claims, drawing a clear distinction between accident cases and disease cases. The Supreme Court rejected the analogy between accidents and cases where Claimants did not witness an accident but suffered an illness due to witnessing a death or medical crisis caused by an untreated disease. The Supreme Court emphasised that for a secondary victim to recover damages, they must be physically present at the scene of an *accident* or its immediate aftermath. This distinction between accidents and diseases is crucial, as the court specified that an accident is an external event causing or having the potential to cause injury, not the injury itself. The Supreme Court held that all three appeals in question - Paul, Polmear, and Purchase - were disease cases.
8. The Supreme Court also overturned the ratio of *North Glamorgan NHS Trust v Walters* [2002] EWCA Civ 1792, [2003] PIQR P16, construing it as an *"unsatisfactory development"*.⁵ In Walters, appropriate treatment for the Claimant's baby was delayed by a misdiagnosis, causing an epileptic seizure leading to coma and irreparable brain damage. Approximately 36 hours after the seizure, the baby died in the Claimant's arms. The Judge in this case held that the deterioration of the baby's condition constituted a *"horrific event"* in the sense that it was *"an accumulation over a period of time of more*

⁴ n1 [137] and [138]

⁵ Ibid. [79]

*gradual assaults on the nervous system.*⁶ This otherwise known as “*inexorable progression*”⁷ argument has been often wielded by Claimants in this sphere of law.

9. Such phrasing used by the Court of Appeal, however, has now been described by the Supreme Court as being vague and unhelpful. The Supreme Court was eager to cast aside the application of this phraseology such as “*inexorable progression*” and a “*seamless tale*,” finding it “*hard to see why the Defendant’s legal liability should turn on the court’s impression of whether or not the facts fit the dramatic pattern of a Greek tragedy.*”⁸ Claimants therefore cannot rely on this argument in future.
10. The majority Judgment also grappled with Lord Ackner’s description of “*shock*” in *Alcock* which has also given rise to the necessity for the event to be “*horrifying*” in order satisfy a secondary victim claim. The Supreme Court, however, effectively reversed this requirement that was further woven in by *Shorter*⁹ and *Ronayne*¹⁰. Given that there is no “*available Richter scale of horror,*”¹¹ such questions are “*invidious and not susceptible to any proper answer.*” Given the difficulty in determining whether an event is horrifying is ultimately subjective, the law took an “*unfortunate turn*” which the Supreme Court now unwinds.
11. In addition, the Supreme Court explained that the “*sudden shock*” requirement, set out in *Alcock*, is no longer relevant. By examining Lord Ackner’s and Lord Oliver’s analysis in *Alcock*, they agreed with the sentiments in *Frost* that “*the nature of PTSD illustrates very clearly the need to abandon the requirement of nervous shock in these cases, and to concentrate on the requirement that the plaintiff should have suffered from a recognised psychiatric illness.*”¹² As a result:

*“With regard to causation, it is sufficient for a claimant who was present at the scene of the accident (or its immediate aftermath) in which a loved one was killed, injured or imperilled to show that there is a causal connection between witnessing that event and the illness suffered. It is not necessary (even were it possible) to demonstrate the neurological or psychological mechanism by which the illness was induced.”*¹³

⁶ n2 [38-41]

⁷ *North Glamorgan NHS Trust v Walters* [2002] EWCA Civ 1792 [35]

⁸ n1 [80]

⁹ *Shorter v Surrey and Sussex Healthcare NHS Trust* [2015] EWHC 614 (QB)

¹⁰ *Liverpool Women’s Hospital NHS Foundation Trust v Ronayne* [2015] EWCA Civ 588, [2015] PIQR P20

¹¹ n1 [76]

¹² *Frost v Chief Constable of South Yorkshire* [1999] 2 AC 455 (“*Frost*”), p 489E-F

¹³ n1 [76]

12. The Supreme Court also emphasised that the “*gap in space and time*” between the breach of duty and accident does not bar recovery, but instead focused the importance of closeness in space and time to the accident itself.

Dissenting Judgment:

13. Lord Burrows, in his dissenting judgment, criticised the majority's approach for unacceptably narrowing the parameters of secondary victim claims. He argued for a broader interpretation, suggesting that the relevant event should be construed as the death of the primary victim. Lord Burrows' dissent calls for a principled development of the law, inviting discussions on the evolution of negligence law in medical contexts.

Possibility of Exceptions:

14. While the majority acknowledged the possibility of exceptions, they emphasised the limited circumstances where such exceptions might apply. The court highlighted hypothetical examples, such as a doctor administering a wrong dose or drug, inducing an acute adverse reaction witnessed by a close relative. However, the court left these issues to be addressed in future cases where they arise on specific facts. In reality, the likelihood of these scenarios appearing seem extremely remote.
15. At a stroke, the Supreme Court has significantly curtailed the possibility of successful nervous shock claims in clinical negligence settings. The ruling establishes a new threshold for recovery, leaving Claimants with a narrow path for compensation in a medical negligence context. The court's cautious acknowledgment of potential exceptions underscores the intricate nature of these cases, leaving room for further judicial interpretation.
16. As the legal landscape evolves post-*Paul*, courts will grapple with the implications and potential exceptions outlined by the Supreme Court. It is imperative for legal practitioners to consider whether a Claimant falls under the primary victim category, as the restrictions on recovery for psychiatric injury do not apply to them.

Conclusion:

17. In conclusion, the Supreme Court's decision in *Paul* has clarified the legal landscape surrounding secondary victim claims in clinical negligence cases. This landmark judgment provides clarity on duty of care, highlights the distinctions between accidents and medical negligence, underscores the role of the medical profession, and sparks a call for legal evolution from the dissenting voice of Lord Burrows.

Takeaway points:

- i. Duty of care clarification: the Supreme Court's decision reiterates the established principle that while doctors owe a duty of care to their patients, this duty does not extend to the close family members witnessing the consequences of medical treatment, a principle mirrored in *Khan v Meadows*;¹⁴
- ii. Distinction between accidents and medical negligence: the judgment emphasises the inherent differences between accidents and medical negligence, asserting that the clear and immediate nature of accidents sets them apart from the often prolonged and complex developments in medical contexts. The Court emphasised the necessity for secondary victims to be physically present at the scene of an accident or its immediate aftermath;
- iii. Overturning *Walters*; the Court labelled it as an unsatisfactory development, emphasising that legal liability should not hinge on the semantics more at home within a dramatic narrative;
- iv. Rejecting "*horrifying event*" and "*shock*" requirement. The court critiqued the subjective nature of determining horror, stating that questions of horror are invidious and not answerable with certainty. The focus now shifts to the requirement that the Claimant should have suffered from a recognised psychiatric illness, such as PTSD, rather than proving the neurological or psychological mechanism of illness induction; and
- v. Closeness in Space and Time: the court emphasised that the "*gap in space and time*" between the breach of duty and accident does not bar recovery. Instead, the importance lies in the closeness in space and time to the accident itself for a secondary victim to claim damages.

¹⁴ [2021] UKSC 21

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