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Content update: January 2024



Highlights:

- ▶ Clarity on the application of art 2 ECHR in inquests involving issues in healthcare – *R (Maguire) v His Majesty's Senior Coroner for Blackpool and Fylde and Another*
- ▶ Recent Supreme Court decisions – *R (Worcestershire County Council) v Secretary of State for Health and Social Care* and *R (Marouf) v Secretary of State for the Home Department*

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Written by experts in medical law and clinical negligence, Medical on i-law.com is the leading provider of legal know-how on major medico-legal cases.

Medical on i-law.com features *Medical Law Reports*, our exclusive series of reports which focus on the most influential appellate and ground-breaking first instance court decisions.

Recently published in *Medical Law Reports*

Professional Standards Authority for Health and Social Care v General Medical Council and Onyekpe [2023] Med LR 577; [2023] EWHC 2391 (Admin)
General Medical Council – Fitness to practise – “Under charging” – Sexual misconduct – Vulnerable Patient – Insufficient sanction.

This is the latest in a long line of appeals brought by the Professional Standards Authority for Health and Social Care (and its predecessor, the Council for the Regulation of Healthcare Professionals). This body oversees healthcare regulators and can appeal their regulatory decisions if it considers they are insufficient for the protection of the public. In his judgment Linden J reviewed the line of authority on “undercharging” which stretches from the seminal 2004 Court of Appeal case of *R (Council for the Regulation of Healthcare Professionals) v General Medical Council and Ruscillo* [2005] Lloyd’s Rep Med 65 to his recent 2022 judgment in *Professional Standards Authority for Health and Social Care v General Medical Council and Battah* [2022] Med LR 484.
www.i-law.com/ilaw/doc/view.htm?id=437019

Rix v Wall

[2023] Med LR 607
Dental claims – Dental negligence – Periodontal disease – Contributory negligence – Implants – Quantum.

In this case the court was asked to determine causation, contributory negligence and quantum, in contrast to many dental negligence cases where quantum is agreed, subject to liability. The key point of interest in this case is the court’s approach to the assessment of losses. For those involved in the defence of dental negligence claims, this case is a helpful illustration of the sort of reduction which might be pursued for contributory negligence on the part of the claimant/patient.
www.i-law.com/ilaw/doc/view.htm?id=437020

R (Maguire) v His Majesty’s Senior Coroner for Blackpool and Fylde and Anothert

[2023] Med LR 499; [2023] UKSC 20
Coroner – Inquest – Death in care home – ECHR, article 2 – Substantive obligation – Enhanced procedural obligation.
This decision is now the leading authority on the application of European Convention on Human Rights (ECHR), article 2 in the context of healthcare. With a comprehensive overview of both the Strasbourg and domestic authorities on article 2 in that context, many will see it as confirming the recent trend of decisions restricting the circumstances in which article 2 can be breached in the context of healthcare.
www.i-law.com/ilaw/doc/view.htm?id=436802



University Hospitals Birmingham NHS Foundation Trust v Thirumalesh (By Her Litigation Friend, The Official Solicitor) and Others

[2023] Med LR 599; [2023] EWCOP 43
Court of Protection – Transparency – Reporting restrictions – Practice and procedure – Medical treatment – Right to respect for private and family life – Freedom of expression – Clinical negligence
This is an interesting case as it highlights the recent change in practice (following the decision of *Abbasi v Newcastle upon Tyne Hospitals NHS Foundation Trust* [2023] EWCA Civ 331; [2023] Med LR 331, and pending the Supreme Court decision in that case) requiring greater focus on the content and duration of transparency orders in the Court of Protection.
www.i-law.com/ilaw/doc/view.htm?id=437021

Shaw (Widow and Executrix of The Estate of Laurence Shaw, Deceased) v Maguire

[2023] Med LR 544; [2023] EWHC 2155 (KB)
Limitation Act 1980 – Fatal Accidents Act 1976 – Preliminary issues – Date of knowledge – Primary limitation – Discretion to disapply limitation – Evidential burden – Cogency of evidence – Delay in bringing proceedings – Judicial discretion.
In this judgment the High Court has held that a claimant can rely upon a section 33 discretion in circumstances where limitation had expired in the primary cause of action prior to the deceased’s death, reinforcing the approach adopted by Mrs Justice Yip in *HMG3 v Dunn* [2019] EWHC 882 (QB).
www.i-law.com/ilaw/doc/view.htm?id=436800

An NHS Trust v St (By Her Litigation Friend, The Official Solicitor) and Others

[2023] Med LR 557; [2023] EWCOP 40
Capacity – End of life hospital patient – Dispute over capacity to decide on future medical treatment – Official Solicitor acting for patient – Patient also instructing own legal representative directly.
ST, had a progressively degenerative disease and had been in hospital for the past year. Her treating clinicians considered her to be approaching the final stage of her life. They intended to move to a treatment plan of palliative care. ST wished to do everything possible to extend her life. The hospital Trust issued proceedings to seek declarations in relation to her capacity and future medical treatment, and to determine the validity of a lasting power of attorney ST had apparently signed three months earlier.
www.i-law.com/ilaw/doc/view.htm?id=436801

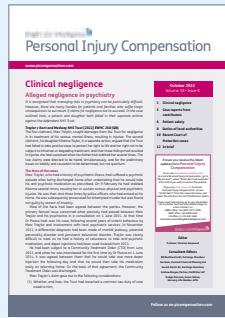
1,347

Judgments published in *Medical Law Reports*

Figure accurate at 21 December 2023

Product focus: Personal Injury Compensation

In each content update we focus on new articles available in our medical case law resource, *Personal Injury Compensation*.



Consent to treatment

McCulloch and Others v Forth Valley Health Board [2023] UKSC 26; [2023] Med LR 461

The Supreme Court has clarified the scope of its ruling in *Montgomery v Lanarkshire Health Board* [2015] Med LR 149 by explaining what legal test should be applied when a doctor is assessing whether an alternative treatment is reasonable, and whether that alternative should be discussed with the patient during the consent process.

www.i-law.com/ilaw/doc/view.htm?id=435421

Recent Supreme Court decision

R (Maguire) v His Majesty's Senior Coroner for Blackpool and Fylde and Another [2023] UKSC 20; [2023] Med LR 499

The Supreme Court has dismissed an appeal involving a challenge to a direction by a coroner that an expanded conclusion was not required in a case concerning the death of a vulnerable adult in February 2017.

www.i-law.com/ilaw/doc/view.htm?id=434965

Supreme Court clarifies responsibilities for aftercare services under s117 Mental Health Act 1983

R (Worcestershire County Council) v Secretary of State for Health and Social Care [2023] UKSC 31

In a recent judgment which will have long-term implications for hard-pressed local authorities and integrated care boards, the Supreme Court has thrown more light on the legal duty under s117 of the Mental Health Act 1983 to provide aftercare services.

www.i-law.com/ilaw/doc/view.htm?id=436262

Birth injuries and the "lost years"

CCC v Sheffield Teaching Hospitals NHS Foundation Trust [2023] EWHC 1770 (KB); [2023] Med LR 476

Young children are usually unsuccessful in claiming damages for the lost years, because it can be very difficult for a court to quantify such claims, since it is almost always impossible to know how much the child might have potentially earned. In a recent case, permission has been given for a leapfrog appeal to the Supreme Court on a point of law concerning the issue of lost years' claim for an eight-year-old girl who had sustained serious injuries at or around the time of her birth.

www.i-law.com/ilaw/doc/view.htm?id=436261

Supreme Court finds the Public Sector Equality Duty does not have extra-territorial effect

R (Marouf) v Secretary of State for the Home Department [2023] UKSC 23

Measures have been introduced in the UK which are bringing about significant cultural changes in the field of equality and discrimination. Reports reviewing progress against equality objectives, published regularly by various Government departments and regulatory bodies such as the Care Quality Commission, identify some promising developments as a result of the obligations under the Public Sector Equality Duty.

www.i-law.com/ilaw/doc/view.htm?id=436259

Personal Injury Compensation includes carefully chosen material edited by Professor Vivienne Harpwood, Emerita Professor of Law at Cardiff University. It focuses on key personal injury and clinical negligence cases from the courts of England and Wales, and brings you timely, authoritative commentaries on the latest sector developments. It specialises in coverage of medical law developments, and brings coverage of case law of interest to medical law professionals, associations, regulatory bodies and insurance companies. Access it on i-law.com and at www.picompensation.com

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practise

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Causation

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Breach of duty

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Expert
evidence

Coming up

The following Reports will shortly appear as part of Medical Law Reports, available online and in hardcopy.

Parsons v Isle of Wight NHS Trust [2023] EWHC 3115 (KB)
Spinal cord injury caused by epidural trocar insertion – Informed consent – Post operative pain relief options – Expert evidence guidance – Relevance of medical records to witness credibility.

Holmes v Poeton Holdings Ltd [2023] EWCA Civ 1377
Legal test of causation – Divisible and indivisible injury – Material contribution – “But for” test – Employer’s liability – Parkinson’s Disease – Trichloroethylene.

Bayless and Others v Norfolk and Norwich University Hospitals NHS Foundation Trust [2023] EWHC 2986 (KB)
Settlement – Part 36 – Children and protected parties – Infant approval hearing – Henderson v Henderson – Abuse of process – Estoppel – Strike out – Discontinuance or withdrawal – Costs.

Also on i-law.com

Liability, Risk and Insurance is a news service, available online and in print, which may be of interest to Medical on i-law.com readers.

Liability, Risk and Insurance has been providing specialist legal information to industry professionals for many years. Every month, our expert editors follow the most noteworthy developments in liability, insurance and risk, including asbestos, medical negligence, NHS issues and occupational risks.



MDU guidance to GPs on delayed hip diagnosis claims

New guidance to GPs on claims that can be brought following an alleged delayed diagnosis of developmental dysplasia of the hip has been published by the Medical Defence Union.

www.i-law.com/ilaw/doc/view.htm?id=435946

Legal costs cap for lower damages clinical negligence claims

Legal costs will be capped in lower damages clinical negligence claims to support victims, speed up justice and protect taxpayers and NHS England cash, according to the UK government. It said limits will be placed on how much lawyers receive from lower damages clinical negligence claims, saving an estimated £500 million over the next decade.

www.i-law.com/ilaw/doc/view.htm?id=436316

Increased charges under NHS injury costs recovery scheme

The tariff and ceiling on charges payable by compensators for the recovery of NHS charges under the NHS injury costs recovery (ICR) scheme increased on 2 October 2023, according to the Department of Health and Social Care. It said this uplift in the level of charges reflects Hospital and Community Health Services (HCHS) inflation. The latest available figure for HCHS inflation is 5.3 per cent from 2 October 2023 to 31 March 2024.

www.i-law.com/ilaw/doc/view.htm?id=436665

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Medical Law Reports: Bound Volume Series 2023 Edition

Available soon

This hardcopy volume features analysis and verbatim text of the most noteworthy court judgments to be handed down in 2023. It is an essential reference tool for medical industry and legal professionals worldwide.



Medical Law Reports is the most authoritative set of law reports on major medico-legal cases. The editorial team from Serjeants' Inn Chambers bring you the most influential appellate decisions, and noteworthy first instance decisions on cases of clinical negligence. Coverage also includes Court of Protection and mental capacity cases and those concerning human rights in the context of medical law.

The 2023 volume features judgments which are carefully selected for their importance and relevance to the legal landscape. Each reference is accompanied by keywords which will help you identify the important issues addressed in each judgment and headnote.

The 2023 volume will be available soon. Find out more:

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