

Case Report:

MIM v Sheffield Teaching Hospitals NHS Foundation Trust [2026] EWHC 562 (KB)

As any practitioner in the field of medical law litigation will know, the common law was significantly clarified by the Supreme Court last year in its judgment in the conjoined appeals in *Paul v Royal Wolverhampton NHS Trust* [2024] UKSC 1.

One of the most important clarifications was as to what constituted an ‘accident’ for the purposes of a secondary victim claim. Such a claim is an exception to the general rule that a person cannot claim compensation for the effects on them of the injury of another. The harshness of this rule was mitigated by the carving out of a specific exception in a piecemeal line of so-called ‘nervous shock’ cases, where a limited class or persons witnessed the death or serious injury of a loved one (or the immediate aftermath) due to an ‘accident’.

The Supreme Court clarified that in this context, this meant a discrete “*unexpected and intended event which causes injury (or a risk of injury) to a victim by violent external means*”. In the context of clinical negligence law, it was held that there would often be no event comparable to this definition, and in any event the scope of a doctor’s duty does not extend to protecting a patient’s loved ones from being exposed to the trauma of witnessing their death or manifestation of disease or injury. The dissenting opinion of Lord Burrows included a recognition that the majority’s decision would preclude secondary victim claims in almost all medical negligence cases.

It has taken a little while for this re-clarified common law to be tested at first instance, but the decision of HHJ Claire Evans, sitting as a Judge of the High Court in Manchester in *MIM* published on 17 March 2026, suggests the prosecution of secondary victim claims in a clinical negligence context will indeed, as Lord Burrows predicted, be and remain fraught with difficulties.

The Claimant in *MIM* suffered a psychiatric injury in the form of an Adjustment Disorder having witnessed the negligent management of his wife’s induced labour and birth of his son in poor condition on 1 June 2020. It was pleaded that the events witnessed amounted to an “*external, traumatic, event which immediately caused injury to his son*” which was directly perceived, as was its immediate aftermath. The Defendant NHS Trust defended the Claim on

the grounds that nothing pleaded by the Claimant was capable of being construed as an ‘accident’, and (following *Paul*) the requirement that the injury having been caused by violent external means and/or being external to the primary victim, had not been met. It was said that the events were a medical crisis or mishap and not an ‘accident’.

The Defendant applied to strike out the Claim pursuant to CPR 3.4(1)(a), upon the basis that the particulars of claim lacked no reasonable grounds for bringing the claim, or alternatively for summary judgment pursuant to CPR 24.2.

The Claimant, perhaps somewhat ambitiously, argued that there need not be an ‘accident’ for a viable secondary victim claim, but this did not find favour with HHJ Evans, who held that it was clear from *Paul* that this was an essential component for a claimant party to prove.

The main thrust of the Claimant’s argument was however, that the events witnessed by him were a continuum during which he feared the worst and eventually where the worst happened. He submitted that the accident commenced from the time he observed that the midwives attending his wife did not appear to know what was happening, but that it is not always going to be possible to pinpoint this. It was argued that the proximity in time was a distinguishing feature of this case, as contrasting with the delays between negligent acts and injury in the conjoined cases heard in *Paul*.

The Court considered that an ordinary person would not regard what occurred in MIM was a “*negligently caused medical crisis, rather than an accident*”. HHJ Evans cross-checked this against the aforesaid definition of Lord Leggatt and Lady Rose, and contrary to the Claimant’s submissions on the point, found that it was essential to determine that there was a discrete event which constituted the ‘accident’, and the suggestion of a “*continuum*” was antithetical to this. The Court concluded that the index events in MIM could not be thus construed as an accident, nor could it be said to amount to “*an unexpected and unintended event which caused injury to MIM’s son by external means*”, as the sounding of a monitor alarm would neither be unexpected nor unintended, nor was it the direct cause of the injury. It was found that the close temporal connection between the events and injuries was irrelevant given the determination in *Paul* that this was not a material component for a successful claim.

Whilst recognising that a secondary victim claim arising from clinical negligence was not impossible following *Paul*, what would constitute as a qualifying ‘accident’ will always turn

on the facts of each case, such as which did not give rise to a viable claim in MIM. Thus, the Claim was struck out.

This judgment probably exemplifies the prediction that it will be rare for a secondary victim claim in clinical negligence cases to succeed, which was of course the case hitherto, with the only reported case being that of *North Glamorgan NHS Trust v Walters* [2002] EWCA Civ 1792, though in circumstances where no doubt many claims were settled prior to any judicial determination. The effect of Paul has been that defendant parties facing such claims are less likely to perceive the litigation risk which may have prevailed previously, and thus adopt a more bullish stance when considering risk-based compromises or applications to strike out. For these reasons, it is likely that the law will continue to be tested, probably further to applications for summary determinations, rather than full trials in the coming years.

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