



## Press Summary

11 January 2024

### **Paul and another (Appellants) v Royal Wolverhampton NHS Trust (Respondent); Polmear and another (Appellants) v Royal Cornwall Hospitals NHS Trust (Respondent); Purchase (Appellant) v Ahmed (Respondent)**

**[2024] UKSC 1**

*On appeal from [2022] EWCA Civ 12*

**Justices:** Lord Briggs, Lord Sales, Lord Leggatt, Lord Burrows, Lady Rose, Lord Richards and Lord Carloway

#### **Background to the Appeals**

The claimants in these three cases are each claiming compensation in the tort of negligence for psychiatric illness caused by the experience of witnessing the death of a close family member in distressing circumstances. In each case, the death was allegedly caused by the negligence of the defendant doctor or health authority in failing to diagnose and treat a life-threatening medical condition. In *Paul*, the claimants are two young daughters who were present when their father died suddenly from such a condition in a public street. In *Polmear*, the claimants are parents who witnessed the tragic death of their young daughter. In *Purchase*, the claimant came upon her daughter in shocking circumstances a few minutes after her death.

In each case, the defendant applied to have the claim for compensation for psychiatric illness summarily dismissed, arguing that, assuming all the facts alleged are true, as a matter of law the claim cannot succeed.

By different routes, this issue in each case reached the Court of Appeal, which heard the appeals together. The Court of Appeal dismissed all three claims.

The claimants now appeal to the Supreme Court.

#### **Judgment**

By a majority of six to one, the Supreme Court dismisses the appeals. The court concludes that, while doctors owe a duty of care to protect the health of their patients, they do not owe a duty of care to members of the patient's close family to protect them against the risk of

illness from the experience of witnessing the death or medical crisis of their relative from a condition which the doctor has negligently failed to diagnose or treat. The Court of Appeal's order dismissing the claims is, therefore, upheld.

Lord Leggatt and Lady Rose, with whom Lord Briggs, Lord Sales and Lord Richards agree, give the leading judgment. Lord Carloway, with whom Lord Sales agrees, gives a judgment concurring with Lord Leggatt and Lady Rose. Lord Burrows gives a dissenting judgment.

## Reasons for the Judgment

For centuries, under the common law, the general rule has been that a person cannot claim compensation for the effect on them, however severe, of the death or injury of another person [2].

An exception has developed which allows a person to claim compensation for personal injury (typically, psychiatric illness) caused by witnessing an accident (or the immediate aftermath of an accident) brought about by the defendant's negligence, in which a close family member (or other loved one) is killed or injured (or put in peril of death or injury) [26]–[51]. An “accident” in this context refers to an unexpected and unintended event in which injury (or the risk of injury) is caused by violent external means: for example, a road accident [23]–[24].

The claimants have argued that this exceptional category of case includes—or should by analogy be extended to include—cases where, as a result of a doctor's negligence, a person dies or manifests injury from a disease which proper treatment would have prevented [24], [50].

The question has not previously been authoritatively decided or examined in any depth [59]. The case law does not provide any conclusive answer. However, the Supreme Court rejects this argument. In the view of the majority, no analogy can reasonably be drawn between cases involving accidents and cases where the claimant does not witness an accident but suffers illness as a result of witnessing a death or medical crisis brought about by an untreated disease [140]–[143].

Accidents are discrete events. It is usually clear and easy to determine whether someone was present at the scene of and directly perceived an accident. Witnessing an accident involving a close family member is likely to be a disturbing and upsetting event. A person who suffers psychiatric injury when their own life or safety is put at risk by a defendant's negligent conduct is entitled to claim compensation and it would be difficult and arbitrary to distinguish between psychiatric injury caused by fear for the claimant's own safety and by fear for the safety of a close family member [107]–[110].

By contrast, in the medical context there is often no event comparable to an accident, as the symptoms of disease or injury may develop over days, months or years. How traumatic it is to witness such events is also highly variable. [111]–[116]. The majority judgment considers and rejects as unacceptable various suggested tests for limiting claims to cases where the close family member suffers a ‘sudden shock’, or where the event witnessed is sufficiently ‘horrifying’, or where the event witnessed is the ‘first manifestation’ of the medical condition [71]–[82], [97]–[103]. Further, in cases where there is no accident, there is no possibility of psychiatric injury caused by fear for the claimant's own safety or bodily integrity [114].

It is also necessary to consider the nature of a doctor's role and the purposes for which medical care is provided to a patient. The responsibilities of a doctor, and the purposes for which care is provided, do not 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 in their relative. In the court's view, in the current state of society the point has not

been reached where the experience of witnessing the death of a close family member from disease is something from which a person can reasonably expect to be shielded by the medical profession [124]–[139].

Consequently, notwithstanding grave sympathy for the claimants, the claims must be dismissed [140]–[143].

Lord Carloway gives a concurring judgment, explaining that, despite historical differences in its development, the same result would be reached under Scots law [252]–[256].

Lord Burrows dissents. He would allow the appeals and hold that the claims can proceed [244], [251]. The majority’s approach will preclude claims by the loved ones of patients, like the claimants, in virtually all circumstances of medical negligence and, in Lord Burrows’ opinion, that is unwarranted [250]. The relevant event should be viewed as the death of the primary victim and, applying the existing proximity or control factors established in the leading cases on claims by secondary victims for negligently caused psychiatric illness, it follows that the relevant duty of care was owed to the relatives in all three cases [198]–[199]. On that approach, there is no need for an accident, that is an event external to the primary victim, which will rarely arise in the medical negligence context [205]–[211]. Even if allowing the appeals were to represent an incremental step forward, that would represent a justified and principled development of the law [201]–[204].

*References in square brackets are to paragraphs in the judgment.*

**NOTE:**

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)**