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### Case Spotlight – Paul, Purchase and Polmear

**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**

#### In Brief -

- 1 – The ruling sets a precedent limiting the scope of secondary victim claims for psychiatric injury.
- 2 – the court emphasised the need to witness an accident, or it's immediate aftermath as integral to secondary victim claims.
- 3 – the decision clarifies the duty of care owed by medical practitioners in protecting against the risks of injury to close relatives in the context of clinical negligence.

The Supreme Court decision in the case of Paul, Polmear and Purchase has significant implications for the law regarding secondary victim claims. The court concluded the claimant in such a position is unable to bring a claim, unless they specifically witnessed the incident and have a close tie of love and affection with the primary victim. Accordingly, the Supreme Court decision now restricts secondary victim claims to those that witness an accident, but it removes the requirement for what is defined as “sudden shock.”

Accordingly, the decision has brought about an end to 30 years of debate, and as to whether a person who witnessed a death or a serious injury to a loved one can bring a claim as a so-

called “secondary victim”. The ruling clarified the scope of secondary victim claims where compensation is sought for psychiatric injury from witnessing the death or serious injury of a loved one can be pursued.

The court's decision is largely based on the interpretation of the term “accident” and the requirement that there be a close tie of love and affection between the primary victim and the secondary victim, thereby setting a new precedent in this area of law.

Therefore, the decision has restricted secondary victim claims to only those who witness an accident but has removed the requirements of “sudden shock to the nervous system” caused by a horrifying event.

In this majority decision, the court dismissed the appeal of the claimants in the case of *Paul v Royal Wolverhampton NHS Trust* [2024] UKSC 1 and the conjoined cases of *Polmear v Royal Cornwall Hospitals NHS Trust* and *Purchase v Ahmed*.

The Supreme Court held the claimant in such a position cannot bring a claim, such as in the case of *North Glamorgan NHS Trust v Walters* [2002] EWCA Civ 1792 which was wrongly decided on its facts.

In summary, the court decision is that for a claimant to satisfy the criteria for a secondary victim claim, as set out in the case of *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 AC 310 the claimant must be present at the scene of the material accident or its immediate aftermath. Accordingly, the claimant must have witnessed the accident and have a close bond of love and affection with the primary victim to succeed with the claim.

Much debate was made concerning the use and definition of the word “accident”, the court stated it was to be used as a term within its ordinary sense and meaning, referring to both an accidental and unexpected event that caused injury, (or risk of injury),” to a victim by violent external means.”

Accordingly, this definition would preclude claims by secondary victims who witnessed the consequences of a family member's illness where proper treatment would have prevented the loss. In such circumstances, the claimant could not satisfy the specific criteria as detailed above.

The Supreme Court utilised a general rule that common law does not recognise one individual's, right or legally compensable interest in the well-being of another. Therefore, the general policy of civil law is opposed to providing remedies for third parties in respect of the effects of injury to others.

Nevertheless, the court believed there must be a line to ensure the liability of negligent actions causing secondary harm within reasonable constraints, it was stated that, “where the line is drawn some people who suffer what may be serious illness in connection with the death or injury of another person will be left uncompensated.”

The court believed the emphasis must be placed on the value of certainty. They also felt that their interpretation of the Allcock criteria – restricting recovery to people “who were present, witnessed the accident and have a close tie of love and affection with the primary victim,” was more logical and therefore more justified than a theory that illness caused by direct perception is somehow more worthy of compensation than that caused by other means.

Rather, the court saw the need to limit the class of eligible claimants to those people most directly and closely connected to the accident, and to impose restrictions that are reasonably straightforward and thus certain.

The court also considered their interpretation of the previous law and general legal principles concerning a medical duty of care, and to whom such a professional duty is owed. They concluded that these responsibilities are not necessarily extended to the protection of the patient’s family from exposure to traumatic events, such as death, or the development of various injuries or disease.

The judgement handed down by the Supreme Court is therefore of great importance and relevance to lawyers involved in civil litigation specifically clinical negligence. A number of crucial observations were made concerning the Allcock criteria which are now vital to all secondary victim claims.

The court stated a claimant must show no more than conventional causation of psychiatric injury in secondary injury claims. Accordingly, as regards, causation, it is deemed sufficient should a claimant be present at the scene of an accident, or the immediate aftermath, involving a loved one, to show a causal link between witnessing the event and the injury or the illness suffered thereafter. By virtue of this, it is not necessary to demonstrate a psychological mechanism by which the injury was caused.

Similarly, the court rejected the suggestion that an accident must give rise to the secondary victims claim by way of an apparent horrifying event. Rather, the claimant must show that it was reasonably foreseeable. The negligence may cause him or her an injury.

The supreme Court also gave guidance on the relative timeline between the material accident and the breach of duty, stating that the gap between breach and the accident is not a bar to recovery of damages. Indeed, they stated there was nothing in any of the prior authorities to prevent recovery of damages, in a personal injury claim, caused by witnessing an accident, by the passage of time between that event, and the negligent act, or indeed omission. Rather, the requirement is one of proximity, both in time and space as well as a direct perception of the accident itself.

In conclusion, the recent Supreme Court decision in the conjoined appeals of Paul and another v Royal Wolverhampton NHS Trust, Polmear and another v Royal Cornwall Hospitals NHS Trust, and Purchase v Ahmed concluded that the claims for compensation did not satisfy the legal requirements for the recovery of damages by the claimants. Accordingly, the court held in favour of the defendants, and dismissed the appeals, casting uncertainty

over a multitude of secondary victim claims and preventing any, **"gap in space and time"** that will prove highly challenging for future claimants.

This decision has provided long awaited clarity in secondary victim claims made for clinical negligence and has also emphasised the limitations and legal requirements for these claims. This judgement will have a significant impact on future claims brought by secondary victims for such psychiatric injury.

Clearly, the decision, which proved unfavourable for the claimants will no doubt have a significant effect on those numerous cases which were stayed pending the appeal. Whilst the judgement has provided clarity for secondary victim claims, the outcome has caused great disappointment, and concern amongst claimant lawyers, because it clearly restricts the scope for recoverability to those who were present and witnessed an accident, as well as having a close relationship with the victim.

Accordingly, the judgement will have a significant impact on the insurance market, particularly in the field of medical malpractice, and especially as the precedent now limits the scope of secondary victim claims for psychiatric injury.

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