

Andrew Post

Call year: 1988

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Andrew has two principal areas of specialism. He undertakes clinical negligence, healthcare and disciplinary cases, and has a particular expertise in dealing with technically complex medical issues. He acts and advises in major costs litigation, particularly where points of principle arise at first instance or on appeal. He is ranked by both Chambers and Partners and the Legal 500 as a leading junior in both these fields.



Practice profile

Clinical Negligence

Andrew is ranked both by the Legal 500 and by Chambers and Partners as a leading junior in clinical negligence. He acts for Claimants and Defendants, and has undertaken cases involving a wide range of clinical specialisms. He regularly deals with multi-million pound cases involving brain damage. He undertakes medical inquests. He has dealt with cases concerning:

Birth asphyxia and other complications of labour
Fetal anomaly screening
Neonatal care
Paediatric surgery
Paediatric monitoring
Paediatric cardiac surgery
Spinal surgery
Joint replacement surgery
Oncology
Psychiatric treatment and care
Infection Control
General practice
Plastic surgery
General surgery
Accident and Emergency care
Dentistry
Ophthalmology
Osteopathy
Podiatry
Clinical Psychology

In the healthcare law field as well as conducting high profile inquests and a wide range of disciplinary work (see below), he undertakes cases involving public law, ethical and consent issues. His cases have included issues such as the following:

Consent to treatment
Force feeding
Judicial review challenges to limits on prescription of cancer drugs
Health care bodies' duty to consult
Funding of care
Access to medical imaging
Status of NHS circulars in relation to terms and conditions of health service workers

Costs

Andrew has been ranked in the top tier of Leading Juniors since Costs Law first appeared as a specialism in the directories. He regularly appears before the Court of Appeal, High Court Judges and County Court Judges on Costs appeals. He undertakes cases concerning points of principle in the Supreme Court Costs Office and in District Registries. He advises and acts in party and party and solicitor and own client disputes. He advises in relation to terms of settlement, terms of retainer, Conditional Fee Agreements and disputes in relation to the indemnity principle and the scope of public funding. He has been involved in cases concerning almost every aspect of costs law including:

- Disputes about retainers
- Estimates
- The effects of costs orders
- The costs effects of acceptances of payments into court
- The indemnity principle
- Conditional Fee Agreements
- Hourly rates
- The terms of retainer of experts
- Appropriate venue for proceedings
- Remuneration for non-contentious work
- In-house solicitors
- After the event insurance
- Security for costs
- Wasted costs orders
- Costs order against third parties
- The conduct of detailed assessments
- Disclosure of privileged material
- Costs Caps
- Public Funding
- Proportionality
- Costs of litigants in person

Disciplinary and Regulatory Law

Andrew undertakes disciplinary and regulatory cases before the General Medical Council, the General Optical Council, the Health Professions Council, the FHSAA and the Solicitors' Disciplinary Tribunal. Medical cases have included:

- Issues of probity and competence in general practice
- Issues of training and supervision in the longest ever case before the General Optical Council
- Allegations of fraud in the conduct of medical research
- Allegations of misconduct in recommending alternative therapy in which the practitioner had a financial interest
- Alleged incompetence in surgical technique
- Fitness to practice by reason of mental illness
- Fitness to practice by reason of alcoholism
- Qualification of non-EU trained doctors
- Issues as to whether a long-serving GP was retrainable

SDT cases have included:

- Allegations of misappropriation of funds
- Accounting irregularities
- Conflicts of interest
- Mortgage fraud
- Handling of complaints

Professional Negligence

Andrew undertakes professional negligence work primarily involving solicitors and barristers, but also in relation to accountants. The cases he has undertaken involve:

- The conduct of clinical negligence claims
- The conduct of personal injury claims
- The conduct of commercial claims
- The conduct of housing claims
- The alleged undersettlement of claims
- The conduct of proceedings to recover costs
- Conveyancing
- Handling of dealings with the Inland Revenue
- Disputes between solicitors and ATE insurers

Other Legal Experience

April-June 2003: volunteer international human rights lawyer in Palestine, working for a Palestinian NGO in East Jerusalem. Andrew worked, inter alia, on the LAW/PCATI application to the Israeli Supreme Court seeking a declaration that the Israeli Government's assassinations policy was illegal.

Further information

Year of call: 1988

Specialist areas: clinical negligence, costs, healthcare and disciplinary law

Education: Trinity College, Cambridge: MA History (entrance scholar); City University: PGDL (distinction); ICSL: Bar Finals (placed second overall); Astbury Scholarship, various awards and prizes.

Appointments: Assessor for High Court costs cases

ADR: Extensive experience of mediation and other ADR

Recent cases

Aldous v East Kent Hospitals QBD 2010, HH Judge Eccles sitting as Deputy High Court Judge. Claim for failure to diagnose caecal volvulus. Acted for the Defendant. Claim abandoned at trial after cross-examination of Claimant's obstetric expert.

B v North West Strategic HA QBD 2010. Complex and difficult CP case where Claimant's mother had suffered a stroke whilst pregnant and had gone on to deliver prematurely. The Claimant suffered a collapse at 3 weeks of age which it was alleged had been caused by mismanagement of the labour. Settlement achieved in the sum of £ 1 million.

Re Moss, Weldon and Gittins Deceased Durham Coroner's Court 2010. Inquest into deaths of number of patients who had died following administration of large dosages of opiates. Issues of responsibility of PCT, GP partners, Durham Constabulary and Department of Health.

Hughes v Gayner QBD 2010. Damages claim following delay in diagnosis of cancer. Claimant had faced terminal prognosis and had therefore given up his shares in a business he had worked in all his working life. Prognosis then improved; issues as to valuation of the loss of the value of the business and the future loss of earnings claim. Acted for Claimant; favourable settlement achieved shortly after issue of proceedings.

McCarthy v Essex Rivers QBD 2009, McKay J. Level of success fee properly recoverable where Claimant's solicitors enter into CFA before undertaking any investigation into merits of case.

General Optical Council v Boots, Burgess, Simmons 2009. The longest case ever conducted by the GOC. Issues as to training and supervision. Represented Richard Simmons who was the only Respondent found not guilty of misconduct.

Payne v Sandwell & Dudley Coventry County Court, HH Judge Gregory, 6/7/09. Acting for Defendant on trial of allegations of negligence by Accident and Emergency casualty officers. Case abandoned on afternoon of first day of trial.

Burgess v Tameside and Glossop Acute Services NHS Trust QBD 2009. Complex cerebral palsy case where the Claimant had suffered both chronic partial hypoxia and a perinatal stroke. Settlement achieved just before trial for £ 2 million; level of settlement included element for consequences of stroke.

Roach v Home Office QBD 2009: test case successfully establishing recoverability of costs of inquest in subsequent civil proceedings.

C v W [2008] EWCA 1459: determination by Court of Appeal of approach to setting of success fee in circumstances where liability has been admitted; dealing with the way in which the Part 36 risk should be taken into account.

Lord Chancellor v Rees [2008] EWHC 3168: determination of fees due to criminal barristers for massive VAT frauds under ex post facto assessment.

Beggs v Medway NHS Trust QBD 2008: Successful defence of obstetric brachial plexus injury case. Claim dismissed at trial.

R v Johnson [2008] Costs LR 337: ex post facto fees for large criminal fraud cases.

Sharples v Pennine Acute NHS Trust QBD 2008: cerebral palsy case with difficult issues as to housing and life expectancy.

Meretz v ACP ChD 2007: liability of multiple clients for fees, apportionment.

Boylard v Cardiff & Vale NHS Trust QBD 2007: successful defence of claim alleging negligence in colorectal surgery.

Briggs v Birmingham HA QBD 2007: cerebral palsy case with difficult issues as to periodical payments and care regime; settled on eve of trial.

Re Crosland et al SCCO 2007: test case as to level of remuneration for receivers.

Smith v North East Derbyshire PCT [2006] EWHC 1336 & [2006] EWCA 1291: Administrative Court and Court of Appeal: judicial review challenge to award of contract for primary care services to multinational company.

Bews v Maidstone and Tunbridge Wells NHS Trust QBD 2006, HH Judge Eccles sitting as Deputy High Court Judge: acting for Defendant in claim arising out of management of patient in heart failure. Claim dismissed.

Re B (Children) [2005] EWCA 779, Times 8/6/05, Court of Appeal: proper approach to recovery of costs against a party who had been publicly funded for part of an action.

Davies v North Cumbria Acute Hospitals NHS Trust 2005: acting for claimant at successful trial of issues of breach of duty and causation arising out of Defendants' failure to manage the deceased's aortic aneurysm.

R (Aegis) v IRC [2005] EWHC 1468 Ch, Park J: Costs penalty for failure to comply with pre-action protocol.

Childerley v General Healthcare Group [2004] EWHC 2777, Dobbs J. Acting for Defendants on claim arising out of Claimant's fall from an operating table. Successfully resisted the Claimant's claim for loss of earnings of some £400,000.

Darley-Jones v Ling, SCCO, 2004: acting for Claimant: successfully resisting attempt to impose costs cap in clinical negligence case.

King v Milton Keynes NHS Trust SCCO, 2004: recoverability of costs of representation at inquest.

Collier v Manchester HA, 2004: acting for Claimant in claim arising out of birth in 1968. Issues in relation to his capacity to litigate. Settled on eve of trial of issues of limitation and capacity.

Jemma Trust v Liptrott [2003] EWCA Civ 1476, Court of Appeal: basis for remuneration of solicitors in noncontentious cases.

Haroon v Queen's Medical Centre NHS Trust, 2003: acting for Claimant on claim arising out of failed spinal surgery: issues in relation to neuronal plasticity. Successful settlement shortly before trial.

Wills v Crown Estates Commissioners [2003] EWHC 1718, [2003] 4 Costs LR 581, Peter Smith J: effects of offers of settlement.

Official Receiver v Dobson [2002] 1 Costs LR 71, Park J: appropriate penalty for delays in assessment proceedings.

Crawford v Central Manchester Healthcare NHS Trust, 2002: acting for Claimant on claim arising out of severe frontal lobe damage to promising post-graduate student. Issues of principle in relation to funding of care. Settled on morning of trial.

Grose v Royal Cornwall Hospitals NHS Trust, 2002: acting for Defendant on successful defence of claim alleging that the pre-natal anomaly scanning policy of the Trust was unreasonable.

Crawford v Central Manchester Healthcare NHS Trust, 2002: acting for Claimant on claim arising out of severe frontal lobe damage to promising post-graduate student. Issues of principle in relation to funding of care. Settled on morning of trial.

Griffiths v Solutia [2001] 1 Costs LR 99, Court of Appeal: Whether appropriate for London solicitors to be instructed in relation to environmental group action.

Mirza v Birmingham HA 31/7/01 Eady J: successful defence of claim alleging negligent conduct of paediatric heart surgery.

Lowe v Whittington Hospital NHS Trust, 2001: acting for Defendant in successfully defending claim alleging negligent orthopaedic treatment of ankle injury.

Hubble v Peterborough Hospitals NHS Trust, 2001: acting for Claimant in relation to right of access to medical records, including x-rays: Defendants tried, unsuccessfully, to argue that x-rays were not within the terms of the Data protection Act.

Bridgewater v Griffiths [2000] 1 WLR 524, Burton J: scope of Legal Aid Certificate

Goulden v Wilson Barca [2000] 1 WLR 167, Court of Appeal: terms on which a legal aid solicitor instructs experts.

Cole v British Telecom [2000] 2 Costs LR 310 Court of Appeal: remuneration of in-house solicitors.

Toniello v Top Deck [1999] 96(1) LSG 23, Court of Appeal: effect of failure to comply with time limits.

Johnson v Busfield [1997] 38 BMLR 29, Nelson J: Limitation in relation to allegation that surgeon should not have proceeded with operation.

Mainwaring v Goldtech [1997] 1 All ER 467, Robert Walker J: costs of litigant in person.

Re S [1996] 1 WLR 235: Rattee J: effects of the Forfeiture Act 1982 on a life assurance policy in circumstances where a husband had killed his wife whilst psychiatrically unwell.

Publications and lectures

Andrew regularly lectures on both costs and medical law. He is a regular contributor to Legal Network Television.

What others say

"Polished performer' Andrew Post elicited praise from instructing solicitors, who note that 'he has broad medical experience and is tactically astute.' Commentators feel that he is 'extremely flexible in his approach' as a result of the fact that he works for both claimants and defendants." *Chambers UK 2010*

"Well favoured amongst instructing solicitors, Andrew Post busies himself with matters of importance and recently appeared against leading silk Jeremy Morgan QC of 39 Essex Street in C v W. 'Never daunted, he is a barrister who doesn't just deal with the nuts and bolts of a case, but gets deep into the strategy too.' Others that impress here include the 'receptive and quick on his feet'." *Chambers UK 2010*

"The 'very bright and effective' Andrew Post acted for the claimant in C v W." *Legal 500 2009*

"Andrew Post is renowned for his keen mind and erudition. 'One of the cleverest people acting in the area, he is an ingenious opponent,' said one rival. Often instructed by leading City firms on settlements, he is said to shine both on paper and in technical matters. His popularity with clients is further enhanced by his 'down-to-earth approach and clear, practical advice.' He has acted for eminent clients in a number of appeals over the past year, proving 'a robust, confident advocate' in all he does'." *Chambers UK 2009*

"Andrew Post has enjoyed his own significant successes in recent months. Something of an expert on cerebral palsy cases, he is a 'thorough, pragmatic and sympathetic' junior who is valued for his 'expert dissections of cases and his pleasant manner with clients'." *Chambers UK 2009*

"With cases like *Mereta v ACP* to his name, leading junior Andrew Post is a favourite choice for City law firms." *Legal 500 2008*

"Approachable, pragmatic and commercial,' Post is a 'first-rate costs specialist whose written product is always top-notch'. Although renowned for finding agreeable pre-trial solutions, his court skills are by no means lacking, with commentators dubbing him a 'measured, objective and - when necessary - punchy advocate'." *Chambers UK 2008*

"Andrew Post is a sought-after advocate, particularly for his knowledge of neuro and cardiac surgery..." *Chambers UK 2008*

"He maintains an impressive reputation for innovation in working with institutional, commercial and solicitor clients.... a first-tier practice" *Legal 500 2007*

"A 'marvellous academic barrister who gives sensible, pragmatic advice,' according to clients. They felt that 'he's just the person for a tricky settlement meeting'." *Chambers UK 2007*

"Applauded for his thoughtful approach." *Chambers UK 2007*

"Has a 'cerebral approach', say clients, which makes him 'excellent at testing the evidence'." *Chambers UK 2006*

"Very bright as well as knowledgeable." *Legal 500 2005*
