

Lucy MacKinnon

Call year: 2003

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Lucy was called to the Bar in July 2003 and was admitted to the New York Bar in June 2004, having been one of the youngest people ever to have passed the New York Bar exams. Lucy specialises in all aspects of medical law including clinical negligence claims and disciplinary proceedings. She has a successful personal injury practice with a particular emphasis on fraud and credit hire claims.

Lucy's main area of expertise is in clinical negligence and medical disciplinary hearings. Lucy acts for both claimants and defendants in a wide range of clinical negligence claims. She recently acted as junior counsel in a cerebral palsy claim which concluded after a five day liability trial with a settlement totalling £1.5 million following an alleged failure to diagnose meningitis in a four month old baby. She was involved in the MMR vaccination litigation having advised a claimant on a complex procedural issue. Lucy regularly represents practitioners in disciplinary proceedings before the Nursing and Midwifery Council, General Medical Council and British Psychological Society, with a particular emphasis on competency, misconduct and health issues. By way of example, Lucy has successfully defended nurses accused of inappropriately touching patients, sleeping on duty and making serious medicines errors. Lucy successfully defended the nurse in *NMC v C (2009)*, who was accused of "thrusting her vagina" in the face of a patient, which was widely reported in the tabloid press. In the general medical law field, Lucy has experience of data protection claims, disability discrimination, limitation and consent issues. She attends inquests and mental health review tribunals.

Lucy has an established practice in personal injury law, representing both claimants and defendants, with particular experience in road traffic accidents and large vehicle claims, credit hire and, employer's liability and slip and trip claims. Lucy has a number of reported cases in the personal injury field.

In the professional negligence field, Lucy has represented a wide variety of professionals including solicitors, surveyors, builders and insurance brokers. Lucy has particular expertise in solicitor's negligence claims resulting from personal injury and clinical negligence work.

Lucy is able to take on work involving the jurisdiction of New York State. She has been awarded the honour of being an 'Empire State' Counsel by the New York State Bar Association.

Practice Profile

Clinical negligence and medical law

Lucy's main area of expertise is in medical law. Lucy acts for both claimants and defendants in clinical negligence claims, covering a wide range of specialisms including gynaecology, ophthalmology, gastroenterology, orthopaedics, general surgery, podiatry, dentistry, cosmetic surgery and general practice. She recently acted as junior counsel in a cerebral palsy claim which concluded after a five day liability trial with a settlement totalling £1.5 million after an alleged failure to diagnose meningitis in a four month old baby. She was involved in the MMR vaccination litigation having advised a claimant on a complex procedural issue. Lucy has particular experience of defending claims brought by litigants in person and successfully defended a six day disability discrimination claim brought against an NHS Trust. Lucy also advises medical practitioners and hospital trusts on wider medical law issues including, for example, data protection, limitation, disclosure and consent. She represented an NHS Trust which intervened in a rape trial on the grounds of public interest. Lucy regularly attends inquests on behalf of hospitals or family members and represented the family at the inquest into the death of Laurence O'Dell (reported in the Metro) and the family at the inquest into the death of Tracey Ketchen (reported in the Portsmouth Times). Lucy also has experience of mental health review tribunal hearings.

Regulatory and disciplinary

Lucy regularly represents practitioners in disciplinary proceedings before the Nursing and Midwifery Council, General Medical Council and British Psychological Society and she has particular experience of competency, health and misconduct issues. She also has experience of disciplinary appeals hearings. Lucy successfully represented the practitioner in *NMC v C* (2009), who was wrongly accused of having "thrust her tarantula like vagina" in the face of a patient, which was widely reported in the tabloid press. The complainant was subsequently discovered to have cited Lucy's cross examination in *NMC v C* as mitigation following his arrest for an assault which occurred later on the same day. Lucy also represented the practitioner in *NMC v S* (2009), accused of possessing child pornography, which involved human rights and privacy issues. Recently, Lucy recently successfully defended the nurse in *NMC v O* (2010), who was accused of having slept on duty whilst a disabled baby was choking, which was reported in the press. Lucy's general disciplinary experience includes successfully defending medical practitioners accused of having made drugs errors, having failed to keep appropriate records, having committed criminal offences, having "touched up" patients and having had inappropriate relationships with patients. Lucy also regularly attends interim orders hearings and hearings before the health committee.

Personal injury

Lucy has a strong practice in personal injury, representing both claimants and defendants. She is currently representing a claimant rendered tetraplegia in an Occupiers' Liability Act claim. She regularly prepares pleadings, provides advice on quantum, evidence and liability and represents clients in court. Lucy has particular experience in road traffic accidents and large vehicle claims. In this field, she has significant experience of credit hire claims, including appeals, and fraud and dishonesty. Lucy represented the Defendant in *Green v Arriva* (2010) successfully arguing that costs following a multi track trial should be limited to those payable on the small claims track after the claimant was only awarded damages of less than £1,000 at trial. The claimant's costs were accordingly reduced from in excess of £50,000 to just over £400. The order was successfully upheld in the High Court on appeal.

Lucy regularly represents clients in multi-track and fast track trials and assessment of damages hearings in all aspects of personal injury work. Lucy also undertakes personal injury claims with an unusual element, for example, she has recently acted in a claim arising out of quad bike accident, a slip on pigeon excrement and an injury caused by a kicking horse. She has particular experience of claims involving more unusual injuries such as trauma to the temporo-mandibular joint and tinnitus claims. Lucy has acted as junior in a number of cases including a large road traffic claim resulting from a multi vehicle motorway collision. She has good experience in acting on behalf of child claimants. Lucy has good experience of MIB and CICA claims and appeals. Lucy has a number of reported cases in the personal injury field.

Professional negligence and commercial

Lucy has good experience in professional negligence and commercial claims including contribution claims and procedural appeals. Lucy regularly acts in solicitor's negligence and surveyor's negligence claims. She acted and advised in a complicated claim against an insurance broker. She has advised on notification issues. Lucy has particular experience of defending wasted costs applications. Lucy is a law reporter for the *Lloyds's Professional Negligence Law Reports*.

Lucy also advises and represents banks in debt issues. She advised and represented Tesco Personal Finance in a successful claim which was recently detailed in the BBC show, "Panorama". Lucy has particular experience of enforcement proceedings. Lucy regularly represents clients in commercial contractual disputes, with a particular emphasis on recruitment contracts. Lucy has particular experience in the interpretation of contract terms and credit hire claims. She has represented a travel agent evicting trespassers from commercial premises. Lucy is keen to take on work involving jurisdictional issues and she is able to take on work involving the jurisdiction of New York State.

Costs

Lucy has experience in the enforcement of costs orders and in costs only litigation, including hearings in the Supreme Court Costs Office. She provides advice on costs matters as they arise in the context of litigation and has represented clients in summary cost assessments. Lucy has particular experience in respect of unreasonable costs on the small claims track and on appeals. She represents solicitors defending wasted costs applications.

Further Information

Year of call: 2003

Specialist areas: medical law, regulatory and disciplinary, personal injury, professional negligence and commercial, costs.

Education:

- Admitted to the New York Bar in June 2004

- New York Bar Exams, Central Law Training (2003 - 2004)
- Bar Vocational Course (Very Competent), BPP Law School (2002 - 2003)
- Lucy was awarded the Sir Thomas More Bursary by Lincoln's Inn.
- University of Reading, LLB Law (Hons) (2:1) (1999 - 2002)
- Kendrick Girls Grammar School, A-Levels and GCSEs (1992 - 1999)

Languages: Basic French and German

Professional memberships:

Professional Negligence Bar Association
 Action Against Medical Accidents
 Dental Law and Ethics Forum
 Association of Regulatory and Disciplinary Lawyers
 New York State Bar Association
 Personal Injury Bar Association

Charitable memberships:

West Berkshire Citizen Advocacy Service
 Free Representation Unit
 Bar Pro Bono Unit

Recent cases

Barrack v Wooding (2009) Leeds District Registry - Lucy represented the Claimant with Martin Spencer QC in a liability trial relating to the failure to diagnose meningitis in a four month old baby. The case was heard by Mr Justice Langstaff. At the conclusion of the trial, judgment was reserved. However, the case was settled for £1,500,000 before judgment was received.

Gocmen (A child) v University Hospitals Bristol NHS Trust (2009 - 2010) - Lucy representing the Claimant in his case against the Trust for a 4 month delay in the diagnosis of Ewing's Sarcoma. The remaining issue between the parties was whether the Claimant would have received high dose chemotherapy irrespective of the delay in diagnosis. As a result of the high dose chemotherapy, the Claimant's fertility has been reduced and he has suffered additional pain. Settlement was subsequently agreed and approved in the sum of £80,000.

NMC v C (2009) - Lucy successfully represented a nurse accused of having "thrust her vagina", which was described as "like a tarantula" in the face of a patient. The case was widely reported in the tabloid press. The complainant was subsequently found to be an unreliable witness and evidence was tendered that he had been arrested an assault after giving his evidence before the NMC, during which he cited Lucy's cross-examination in mitigation for the offence. It was subsequently determined that the practitioner's fitness to practise was not impaired.

NMC v O (2010) - Lucy successfully defended a nurse accused of sleeping whilst a baby in her care was choking, which was reported in the press. The complaint was dismissed at the facts stage.

Moore v Basildon & Thurrock University Hospitals NHS Trust (2010) LTLPI 12/5/2010 - Lucy represented the Claimant who received £175,000 after medical staff prescribed medication in contravention of the BNF, which caused a peripheral neuropathy. The Claimant was subsequently misdiagnosed with leukaemia. He suffered permanent physical symptoms including pain, a weakness of flexion in his lower limbs and an abnormal gait. He also experienced psychological injuries.

Curley v South London & Maudsley Foundation Trust (2009) - Lucy represented the Defendant in a disability discrimination claim brought in respect of the manner in which services throughout the Trust were managed. The alleged discrimination included reference to a white board comment in a gym contained in the psychiatric unit which allegedly stated, "We don't bring our problems here". After a trial lasting in excess of six days, it was determined in the Defendant's favour that there had been no discrimination.

NMC v S (2009) - Lucy represented a nurse convicted of possessing child pornography, raising privacy and data protection issues.

Benn v Luthra (2010) - Lucy is representing the Defendant dentist in a forthcoming limitation trial. The Claimant alleges negligence and breach of contract in respect of the provision of 10 veneers. However, the Defendant is alleging that the claim is limitation barred and, in particular, the Defendant will be prejudiced if the claim proceeds because the Claimant has had all 10 veneers removed.

Green v Arriva (2010) Liverpool District Registry - Lucy represented the Defendant in a multi track trial in which the Claimant was subsequently awarded damages of less than £1,000 and costs on the small claims track basis. Lucy also successfully defended the costs order on appeal, reducing the Claimant's costs from in excess of £50,000 to just over £400.

Inquest into the death of Tracey Ketchen (December 2008) - Lucy represented the family at this inquest. The deceased was admitted to hospital having suffered an asthma attack. However, the hospital failed to diagnose the deceased's condition and subsequently failed to ensure that her oxygen levels were continuously monitored such that the nursing staff failed to recognise that the Claimant was not receiving enough oxygen. The coroner recorded a verdict of death by natural causes but made recommendations for improvements at the Trust. The case was reported widely in the local media (e.g. Portsmouth Today).

Way v Saafi (T/A Bluebird) (2008) LTLPI 23/02/09 - Liability and quantum trial in respect of an Occupiers' Liability Act claim. Judgment awarded in favour of the Claimant. During the course of Lucy's cross-examination of the Defendant's witnesses, it emerged that the "independent" witness was married to an employee of the Defendant shop. General damages of £3,500 (in addition to special damages) assessed and awarded to the Claimant.

Cuerden v Woodger (2009) LTLPI 23/7/2009 - Liability and assessment of damages in a claim in which the Claimant subsequently sustained an unrelated injury one week after the accident.

T Mobile (UK) Ltd v Akehurst & Dansey (2009) Lawtel - General damages awarded for whiplash injuries following a road traffic accident.

Davies v (1) Jones (2) Express Link (2006) Lawtel, 29th June 2006 - Assessment of damages hearing in respect of an injury to the temporo-mandibular joint. The Claimant's injury restricted her choice of food and caused her social embarrassment. General damages were awarded of £14,850.

Reginald Weaver v Randtoul (2006) LTLPI 11/10/2006 - Assessment of damages following a road traffic accident in which the Claimant sustained a fractured clavicle. The Claimant received a total award of £16,500, including general damages of £8,000.

Ali v Smith (2007) Current Law, 6th October 2006 - Despite recent amendments to the provisions of Part 27 restricting costs on an appeal from the small claims track, it was appropriate that the Defendant pay the Claimant's costs because she had acted unreasonably in bringing the appeal. The prospects of the Defendant's success on appeal had been very poor and the appeal was an attempt to have a retrial, partly based on new evidence, which was not supported by the Defendant's insurers. It was right that the Defendant should pay the Claimant's costs in circumstances where it was totally disproportionate and inappropriate for the appeal to have been brought.

(1) *K & R Plant Hire Ltd* (2) *David Heywood v Stiller* (2006) LTLPI 24/3/2006 - Assessment of damages following a road traffic accident which led to the Claimant developing bursitis of the elbow. The Claimant was awarded general damages of £2,812.50 after 25 per cent reduction for contributory negligence.

Damhar v Arriva London Limited Current Law, 8th January 2007 - It was appropriate to invoke the court's powers under CPR r.21.14 (2)(d) to vary the usual order that the Claimant's costs were payable by the Defendant where the Claimant had failed to serve his witness statements in accordance with the court directions. If the Claimant had done so, the Defendant would have been able to take a decision upon whether it was commercially viable to defend the claim. In such circumstances, the appropriate order, despite the Claimant's success at trial, was no order for costs.

Publications and lectures

RTAs: Cover Stories, (2005) 41 *Personal Injury Law Journal* 6. Dependency claims: defining a household, (2006) 42 *Personal Injury Law Journal* 2.

'The importance of applying medical knowledge to your cases', AvMA Essential Medicine for Lawyers conference 2006.

Personal info

Lucy is generally regarded as being very approachable and has an ability to form a rapport with clients from all backgrounds and walks of life, which enables her to regularly act for children and vulnerable adults. She is able to explain processes and procedures in a simplistic manner in order to ensure that her advice is understood. Lucy is a committed member of the Bar Pro Bono Unit and has assisted numerous clients through the Unit, particularly in the medical law field. Lucy has been involved in the work of the West Berkshire Citizen Advocacy Service, a unit which assists adults with learning disabilities in making and expressing their own views about their care and lifestyle. Lucy was awarded the honour of being an 'Empire State' Counsel by the New York State Bar Association for her commitment to pro bono services.

Lucy is also known for her negotiation skills, both in respect of medical and personal injury claims and in commercial matters. She was awarded the highest mark in the year for Negotiation during the Bar Vocational Course.

Lucy often provides talks and lectures to her regular clients on areas of law within her specialism and aspects of current awareness.

Outside work, Lucy has a particular interest in sailing and has sailed both around the south coast of England and the east coast of America, often with her dog.
