

Lucy MacKinnon

Call: 2003



Overview

Lucy specialises in all aspects of medical law including clinical negligence claims and disciplinary proceedings. Lucy is listed in *The Legal 500* as a leading junior in Clinical Negligence and Healthcare in which she is described to be a “determined advocate” known for her “overt reasonableness”. The 2017 edition says Lucy “provides sound judgment”. She also has a successful personal injury practice with a particular emphasis on fraud and credit hire claims.

Lucy’s main area of expertise is clinical negligence and personal injury. 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 £1.5m 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 misconduct, competency and health issues. By way of example, Lucy has successfully defended nurses accused of inappropriately touching patients, sleeping on duty and making serious medication errors. Lucy successfully defended the nurse in *NMC v C* (2009), who was accused of exposing herself to 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, and limitation and consent issues. Lucy regularly attends inquests, most notably having represented the family of respected author, Luke Bitmead, concerning his death which was widely reported in the press. Lucy also has experience of 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, fraud, credit hire, employer’s liability, and slip and trip claims. Lucy has a number of reported cases in the personal injury field. Lucy is able to work in the

jurisdiction of New York State. When admitted to the New York Bar in June 2004, she was one of the youngest people ever to have passed the New York Bar exams. She has been awarded the honour of being an 'Empire State' Counsel by the New York State Bar Association.

Lucy accepts instructions in all areas of clinical practice, and she has considerable experience in unusual claims. By way of example, Lucy acted in *Moore v Basildon & Thurrock University Hospitals NHS Trust* (2010) LTLPI 12/5/2010, a case which involved excessive doses of Linezolid. Lucy recently represented a young claimant who obtained a settlement following a delay in providing appropriate treatment for hepatitis.

Lucy has also earned the title of 'Clinical Negligence Lawyer of the Year' in Lawyer Monthly's Women in Law Awards 2017!

Medical law

Lucy acts for both claimants and defendants in clinical negligence claims and accepts instructions in respect of both privately and publicly funded claims and on a fee arrangements basis. Lucy is frequently instructed during the very early stages of prospective claims in order to assist in prioritising investigations with a view to saving costs.

Spinal surgery claims

Lucy has acted in a number of claims resulting from spinal surgery both on behalf of claimants and defendants. In particular, Lucy has advised in a number of cases involving fusion surgery and prosthetic disc replacements, with a particular emphasis on consent issues. Most notably, Lucy acted for the claimant in *Dowsett v Whipps Cross University Hospital NHS Trust* (Lawtel, 2011) who received damages in the sum of £165,000 following a spinal fusion procedure to the L2/L3/L4 performed in September 2006. The case involved issues of consent and in respect of the standard of both the initial surgery and revision procedure. The case was particularly unusual because the medical records contained three separate and distinct Operation Records despite the fact that only two surgical procedures were ever performed.

Orthopaedic claims

In addition to spinal claims, Lucy has acted in a number of general orthopaedic claims. In respect of carpal tunnel release procedures, Lucy has acted for both claimants and defendants in claims involving, for example, CRPS resulting from nerve damage sustained during a carpal tunnel release procedure, incomplete releases and excess scar tissue. Lucy has successfully acted in a number of claims relating to childhood fractures to the forearm and the decision making process regarding whether to operate or to simply immobilise the fracture. Lucy was recently successful in acting for a claimant who sustained a supracondylar fracture in 1992, overcoming potential limitation difficulties.

In terms of lower limbs, Lucy has acted in a number of cases relating to knee injuries and, in particular, the failure to diagnose injuries to the posterior lateral corner. Lucy is currently acting in a number of cases relating to the ankle and foot including, for example, failure to diagnose a Maisonneuve fracture and poorly performed fusion surgery. Lucy has been involved in a number of cases relating to hip fractures, particularly in elderly patients, and the results of hip replacements.

General surgery

Lucy has experience of a wide variety of claims in the general surgery sphere. Lucy has acted in a number of gynaecology claims including complaints relating to the performance of total abdominal hysterectomies, treatment of fibroids, laparoscopic investigations and retained swabs. Many of these cases have involved issues of consent and psychiatric harm.

Lucy has acted in cases relating to endoscopic retrograde cholangio-pancreatography, abdominal aneurysms, hernia procedures and the treatment of piles. Many of these cases have involved difficult causation issues regarding the condition of the claimant had alternative treatment been provided.

Lucy has acted in a number of cases involving the failure to diagnose and treat ischaemia in a lower limb resulting in amputation.

Birth claims

Lucy has significant experience of claims resulting from hypoxia at birth and the difficult causation issues which such claims often present. Lucy also has experience of claims which result in the death of the foetus or newborn baby and has been involved in providing assistance at inquests in such cases. Lucy represented the family at the inquest into the death of Hebe Carr, which resulted in the jury providing a narrative verdict which was critical of the standard of care provided.

Lucy has extensive experience of cases involving infections in newborn or small babies.

Lucy represented the claimant in *C v Epsom & St Helier University Hospitals NHS Trust* (October 2010), a case which involved a Group B Streptococcus infection.

Lucy has considerable experience of claims relating to congenital hip defects and has for both claimants and defendants in such cases. Lucy also has experience of shoulder dystocia and Erb's palsy claims.

Oncology

Lucy has acted in a range of oncology claims. Lucy acted in a successful claim relating to delayed diagnosis of Ewing's sarcoma which resulted in an £80,000 settlement on behalf of a 14 year old boy. Lucy has acted in a number of claims relating to prostate and breast cancer and is often involved in advising upon the effects and impact of histopathology evidence on causation.

Cosmetic procedures

Lucy has acted in a number of claims relating to elective cosmetic surgery including breast augmentation, facelifts, rhinoplasties, scar removal and hair transplants. Many of these cases have also involved significant issues regarding psychiatric harm and consent.

GP / Primary care claims

Lucy acts in claims resulting from primary care attendances. Lucy acted as junior counsel in *Barrack v Wooding*, a successful claim which resulted in a settlement of £1,500,000 following delayed diagnosis of meningococcal septicaemia. Lucy has acted in claims against general practitioners relating to alleged failures to refer patients with suspected aneurysms, chronic ischaemia and possible cancer. Lucy has also acted in claims relating to General Practitioners working in an RMO capacity.

Nursing care

Lucy's considerable experience in Nursing and Midwifery Council proceedings provides her with a significant advantage with claims relating to nursing practice. In particular, Lucy has acted in numerous claims relating to pressure sores and the use of Waterlow scores. Lucy has acted in disputes regarding the standard of care adopted by district nurses including claims relating to pressure sores and surgical wounds.

Dental claims

Lucy has represented both claimants and defendants in a wide range of dental claims. Lucy is currently acting in a claim relating to the alleged failure to diagnose a keratocysts in the lower jaw. However, the majority of Lucy's experience in dental claims relates to alleged failure to diagnose caries, poor root canal treatment and cosmetic procedures. Lucy has considerable experience in limitation issues relating to dental treatment and was recently involved in a claim that was discontinued shortly before the limitation trial was due to take place.

Other medical professionals

Lucy also acts in cases involving the standard of care provided by other medical professionals including therapists, opticians, podiatrists and paramedics. Lucy successfully defended a claim relating to the standard of care adopted by a physiotherapist in both the assessment and treatment of a patient.

Mental health claims

Lucy has considerable experience of dealing with claims relating to patients who are either undergoing psychiatric treatment or who have a significant psychiatric history. In this field, Lucy regularly acts for hospital trusts that are defending claims brought by litigants in person and she is acutely aware of the particular sensitivities which such litigation presents, particularly where the claimant is still being treated by the Trust.

Disciplinary and regulatory

Misconduct cases

Lucy has represented a significant number of practitioners in misconduct cases. Lucy successfully represented the practitioner in *NMC v C* (2009), who was 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. Lucy successfully represented the nurse in *NMC v A*, who was accused of sending inappropriate text messages to a patient’s teenage relative, which was widely reported in the tabloid press. Recently, Lucy successfully defended the nurse in *NMC v O* (2010), who was accused of having slept on duty while 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 personal relationships with patients. Lucy has significant experience in handling cases involving working while claiming sick pay. Specific examples of Lucy’s wide experience include representing practitioners who self-medicate, breaches of infection control policies and falsified records.

Health cases

Lucy has acted in a number of competency cases involving both general skills and more specialist treatment areas. Her experience includes, for example, cannulation, record keeping and administration of drug cases.

Lucy has represented a number of practitioners in health cases, most notably cases involving psychiatric conditions such as depression, schizophrenia, bipolar disorder and obsessive compulsive disorder.

Lucy has a strong practice in personal injury, representing both claimants and defendants. She is currently representing a claimant rendered tetraplegic 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 of road traffic accidents and large vehicle claims. In this field, she has significant experience of credit hire claims, including appeals, and fraud and dishonesty. She often represents drivers at inquests.

Lucy regularly represents clients in multi-track and fast track trials and at assessment of damages hearings relating to all aspects of personal injury work. Lucy also undertakes personal injury claims with unusual elements, 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. Lucy has acted in cases involving accidents at sea and during more extreme sports, such as powerboat

rating. She has particular experience of claims involving more unusual injuries such as trauma to the temporo-mandibular joint and tinnitus claims. Lucy has significant experience of dealing with cases involving rheumatological conditions such as CRPS. Lucy has particular experience of personal injury costs.

Lucy represented the Defendant in *Green v Arriva* (Lawtel, Westlaw, 2011) 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. 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.

Costs

Lucy has experience of the enforcement of costs orders and in costs only litigation, including hearings in the Supreme Court Costs Office. She provides advice about 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 has represented solicitors defending wasted costs applications.

Inquests

Lucy is currently representing two claimants in an action brought for psychiatric harm following the suicide of a family member. Lucy has also acted in a number of cases involving the physical and psychological effects of self harm and suicide attempts and is currently representing a claimant who sustained significant orthopaedic injuries after jumping from a bridge. Lucy has also acted for a claimant who was subsequently diagnosed with Munchausen syndrome.

Notable cases

Gocmen (A child) v University Hospitals Bristol NHS Trust (Clinical Risk, May 2011) – Lucy represented 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, with general damages estimated to be in the region of £61,000.

Inquest into the death of Luke Bitmead (2010) – Lucy successfully represented the family of Luke Bitmead, an author. The inquest was widely reported in the press both by the BBC and in local publications and Luke’s family featured in a BBC Radio 4 documentary regarding the coronial system.

NMC v O (2010) – Lucy successfully defended a nurse accused of sleeping while 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. The case was widely reported in the national press including the Daily Telegraph, Daily Mail and Metro and it was even picked up and reported by the Bulgarian media.

Hawkes v Poole Hospital NHS Trust (2010) LTLPI 14/10/2010 – Lucy represented the defendant in a settlement for £250,000 following alleged delays in the diagnosis and treatment of cervical cancer. The settlement was approved at the High Court.

Benn v Luthra (2010) – Lucy represented a defendant dentist at a limitation trial.

Green v Arriva (2010) LTL 18/2/2011, Westlaw 24th May 2010 – 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. The net costs position was that, although the claimant had received damages, the claimant’s liability to the defendant in costs was in excess of the defendant’s liability to the claimant.

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 for 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.

Barrack v Wooding (2009) Leeds District Registry – Lucy represented the claimant with Martin Spencer KC 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.

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.

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.

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 was 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's shop. General damages of £3,500 (in addition to special damages) were assessed and awarded to the claimant.

Damhar v Arriva London Limited Current Law, 8th January 2007 – Lucy represented the defendant in this case, which involved issues regarding the appropriate costs order. The court held that 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 make a decision about 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.

Ali v Smith (2007) Current Law, 6th October 2006 – Lucy successfully represented the claimant in this case which went to appeal. The court held that 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 determined that 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.

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.

(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.

What others say

"A great communicator with excellent attention to detail" *Legal 500, 2020*

"She has the ability to digest vast amounts of complex medical information and to communicate clearly and take control" *Legal 500, 2019*

"She provides sound judgement" *Legal 500, 2017*

"Her written work is excellent and her judgement is totally sound." *Legal 500, 2016*

"Combines her regulatory practice with strong expertise in medical law." *Legal 500, 2015*

"She really drills down into the detail and is always accessible." *Legal 500, 2015*

"Received extensive and effusive positive feedback from market sources for her growing presence in clinical negligence." "She is very good as she's approachable, thorough in conference and well prepared". Experts and clients like to work with her." *Chambers UK, 2014*

Further information

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)

Publications and Lectures

- Butterworths Inquest Law 2011, "Inquest Costs".
- 'The importance of applying medical knowledge to your cases', AvMA Essential Medicine for Lawyers conference 2006.
- Dependency claims: defining a household, (2006) 42 Personal Injury Law Journal 2.
- RTAs: Cover Stories, (2005) 41 Personal Injury Law Journal 6.

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. Lucy is also known for her negotiation skills. 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.

Personal: 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.

ICO Data protection registration number: **Z9023770**.

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