



Nadia Whittaker



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(Legal 500, 2021)



+44 (0)20 7797 8100

whittaker@crownofficechambers.com

Nadia Whittaker specialises in personal injury, occupational disease, clinical negligence and inquests. She benefits from having an academic background in psychology and medical law.

Clinical Negligence

Clinical negligence is Nadia's main area of speciality, although she also maintains a busy practice in personal injury and occupational disease. She benefits from her academic background in psychology and medical law.

Nadia is instructed on a regular basis on behalf of a significant number of Defendant Health Trusts, medical defence organisations and NHS Resolution as well as for Claimants. She adopts a client-centred pragmatic approach to her advisory work and her pleadings are robust and comprehensive. She is regularly instructed to appear at trials and interim hearings, often against more senior Counsel and Queen's Counsel. She has experience of multiparty litigation involving ambulance services, hospitals, General Practitioners and non-clinical tortfeasors and has been instructed in contribution claims in this context.

She is familiar with all types of ADR and is happy to undertake work on a CFA basis. She frequently hosts conferences in Chambers or elsewhere at the clients' convenience. Chambers also offers a high quality video link, which can be used to co-ordinate meetings.

Nadia has developed a particular interest in claims involving pressure damage in paraplegics and amputees and has successfully concluded a number of claims on behalf of the NHS Trust and Care Homes involving significant pressure damage, leading to death or the alleged requirement for a substantial care packages.

Another area of special interest involves patients attempting or committing suicide in acute clinical settings, leading to complex arguments on the scope of duty of care, causation and quantum, particularly, where the deceased are young with apparently satisfactory pre-morbid functioning and a number of dependents.

A further emerging area of Nadia's expertise concerns alleged injuries that do not appear to have any organic basis involving symptoms of blindness and paralysis with concomitant substantial claims for future loss.

Nadia has represented a number of ambulance services in the context of alleged failure to convey patients to hospital on time and also has experience of claims arising from alleged negligent treatment provided to prisoners. She has also appeared in the Court of Protection in respect of a contested decision to switch off lifesaving treatment.

In addition to her clinical negligence practice, she regularly appears at Inquests involving issues pertaining to medical treatment provided at hospitals and Care Homes often raising issues of neglect and the engagement of Article 2 of the European Convention of Human Rights (ECHR).

Selected Cases

- Emergency medicine: rupture of pseudo-aneurysm of the femoral artery; allegations of negligence and breach of Articles 2 and 3 of the ECHR arising from the death of an elderly patient in the Accident & Emergency department following a clinical decision not to provide active resuscitation; failure to diagnose aortic valve pathology; delay in diagnosis of DVT; delay in diagnosis of stroke and idiopathic intra-cranial hypertension; delay in diagnosis of a Cauda Equina Syndrome.
- Anaesthesia: complication from general anaesthesia resulting in brachial plexus injury (Rowley -v- King's College Hospital NHS Foundation Trust (2017) unreported, Recorder Berkley); complications allegedly arising from administration of spinal anaesthetic with concomitant issues of consent.
- Ambulance services: delays in conveying patients to hospital in the context of choking incidents, suspected stroke or TIA and bowel obstruction.
- Bariatric surgery: death resulting from complications of roux-en-y long limb gastric bypass surgery and complications of gastric band surgery.
- General surgery: laparoscopic cholecystectomy and bile duct injury; bowel obstruction; complications of Crohn's disease.
- Gynaecology: a posterior repair of vaginal prolapse; tubo-ovarian abscess; management of endometriosis; mastectomy.
- Nursing: Grade III-IV pressure damage; failure to provide adequate hydration and nutrition leading to requirement for PEG nutrition and death from buried bumper syndrome; pressure damage in paraplegics.
- Obstetrics: shoulder dystocia resulting in brachial plexus injury; unrelated maternal conditions affecting mode of delivery and consent; tears, leading incontinence and other complications; ureteric and bowel injury;
- Orthopaedic surgery: informed consent for a surgical procedure following a rupture of the long head of biceps; necrotising fasciitis necessitating revision of below knee amputation to above knee amputation; total hip replacement; compartment syndrome
- Ophthalmology: non-organic visual loss allegedly caused by a delay in diagnosis of idiopathic intra-cranial hypertension.
- Neonatology: death of a premature baby from necrotising enterocolitis (AT v The Princess Alexandra Hospitals NHS Trust (2016) unreported HHJ Cryan)
- Neurology: Complex Regional Pain Syndrome allegedly arising from an injection of local anaesthetic; sudden death in epilepsy; non-organic visual loss and paralysis.
- Spinal surgery: spinal abscesses; a Cauda Equina Syndrome; thoracolumbar fractures.
- Podiatry: minimally invasive osteotomies; cheilectomies; Scarf and Akin osteotomies.

- Psychiatry: suicide of a voluntary mental health patient (A, X (a child) and Y (a child), by her litigation v Sussex Partnership NHS Foundation Trust (2016), HHJ Gore QC); suicide of a long-term psychiatric patient detained under the Mental Health Act, listed for inquest before the Jury.

Personal Injury

Nadia has wide-ranging experience of personal injury litigation. Recent examples of her work are:

- pedestrians suffering catastrophic/fatal injuries in collisions with HGVs/buses: Osipov v Cemex Ltd (2018); Abbott v Red & White Services Limited (ongoing);
- motorbike/pushbike accidents: Owen v Khan (ongoing, catastrophic injuries); Lennon v Frith (2018, brain injury);
- road traffic accident claims raising issues *ex turpi causa, volenti non fit injuria* and contributory negligence (e.g. knowledge of driver's alcohol consumption, partaking in a criminal enterprise, failure to wear a seatbelt);
- insurance issues, including indemnity, scope of liability of an RTA insurer (e.g. using vehicle as a weapon or for other purposes) and counter-claims against other insurers;
- claims against the MIB involving uninsured and untraced drivers;
- Gray v Botwright [2014] EWCA Civ 1201: following the successful defence of a claim involving a Defendant crossing a junction at a red traffic light, liability was apportioned 50:50 on a 2nd appeal to the Court of Appeal.

Public Liability

- tripping and slipping injuries in a variety of settings such as supermarkets, school premises, bus stations, leisure centres, public piers, parks and on highways;
- issues involving snow and ice claims;
- occupiers' liability and defective premises claims (boilers, radiators, common parts);
- injuries at sports and activities centres (climbing, trampolining, go-carting, football).

Employers' Liability

- assaults at work causing physical and psychiatric injuries (including delayed onset injuries such as cardiac arrest);
- lifting injuries in a variety of settings (nurses, builders, delivery drivers, shop and warehouse assistants, physiotherapists and undertakers);
- falls from heights in relation to employees and independent contractors;
- tripping and slipping claims at work, including at employers' premises and premises where employees are required to attend as part of their employment (e.g. carers at service user's homes);
- disease claims (please see Occupational Disease section).

Care Homes

- claims arising in the setting of Care Homes (pressure sores, choking, trips, slips and falls, failure to seek timely medical attention and assault by residents/carers);
- Inquests (including Article 2 inquests with and without a jury) arising from death in care settings;
- Nadia recently represented the family at an Inquest in front of a jury where a conclusion was returned that the deceased's death from irreversible cerebral anoxia and upper airway obstruction

was contributed to by neglect. Despite her known risk of self-harm by the use of ligatures, the deceased was permitted to wear tights, and was not subject to adequate observations.

- <https://www.judiciary.gov.uk/publications/francesca-whyatt-2/>
- <https://www.thetimes.co.uk/article/priory-under-investigation-after-suicide-in-unsafe-unit-998h6jrql>

Abuse: Nadia has been instructed in numerous cases involving the sexual, emotional and physical abuse of children and advises both the perpetrators and the victims on quantum. She is currently instructed on behalf of the Claimant in a case involving historic sexual and physical abuse which proceeds against the perpetrators of the abuse and in respect of clinical negligence on the part of doctors who failed to escalate their concerns about potential abuse of a 5 year old child suffering from genital warts.

Catastrophic injuries: cases featuring life changing spinal injuries, amputations and traumatic brain injuries. Recent experience involves a number of subtle brain injury claims raising intricate issues of capacity, future care and residual earnings.

Fatal Accident Act claims: Nadia is regularly instructed in complex claims for financial dependency. Recent examples include a range of issues:

- the deceased's future career development (e.g. a young deceased employed as a manager alleged to be ambitious and likely to progress to the Board of Directors);
- the application of section 4 of the Fatal Accident Act 1976 to various sources of income existing at the time of death and paid to the deceased's estate thereafter;
- the recoverability of costs of IVF where fertilised embryos are in existence at the time of death;
- appropriate care regime for a large family of orphaned children following premature death of a single mother.

Chronic pain: cases where an apparently minor accident has resulted in complaints of significant ongoing disability with potential issues of exaggeration or malingering.

Conversion disorders: cases of non-organic injuries (e.g. blindness, inability to use the right hand, abdominal pain) mediated by a psychiatric condition where a line needs to be drawn between potential malingering and a genuine psychiatric condition, complicating issues of causation and prognosis.

Fraud: Nadia's experience in dealing with alleged fraud includes:

- in the context of road traffic accidents including staged and semi-staged accidents, LVI, phantom passengers;
- holiday sickness claims;
- exaggeration, malingering and fundamental dishonesty in the context of disapplication of QOWCS and under section 57 of the Criminal Justice and Courts Act 2015.

Selected Cases

- Noise-induced hearing loss: alleged exposure from 1960s; de minimis loss; low fence threshold arguments; asymmetric hearing loss; moderate tinnitus with minimal hearing loss; tinnitus alone in the context of claims by former BT engineers and auditory trauma, both instantaneous and cumulative.
- Asbestos-related conditions: mesothelioma; lung cancer; asbestosis; diffuse pleural thickening.



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- Upper limb disorders: lateral and medial epicondylitis; HAVS; carpal tunnel syndrome; rotator cuff pathology.
 - Other diseases: dermatitis; botryomycosis; actinomycosis; abscesses; bird fancier's lung.

Inquests & Public Inquiries

Nadia has considerable interest in the coronial jurisdiction and is regularly instructed to attend inquests considering death in clinical settings. Recent examples of her work include suicide in acute care settings as well as at institutions such as the Priory Hospital. She has considerable experience of representing Care Homes in respect of various scenarios including pressure sores, choking and other allegations of neglect leading to death.

Qualifications

- Princess Royal Scholar & Exhibitioner, Inner Temple
- LLB (First Class), College of Law (2007)
- BVC (Outstanding), College of Law (2006 – 2007)
- GDL (Distinction), College of Law (2004 – 2006)
- MA in Medical Law & Ethics (Merit), King's College London (2002 – 2004)
- BSc in Psychology (First Class), Westminster University (1999 – 2002)

Memberships

- PIBA

Recommendations

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