



Neutral Citation Number: [2026] EWHC 562 (KB)

Case No: KB-2025-MAN-000247

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

Manchester Civil Justice Centre
1 Bridge Street West, Manchester M60 9DJ

Date: 17th March 2026

Before :

HER HONOUR JUDGE CLAIRE EVANS
(sitting as a Judge of the High Court)

Between :

MIM	<u>Claimant</u>
- and -	
SHEFFIELD TEACHING HOSPITALS NHS FOUNDATION TRUST	<u>Defendant</u>

Christopher Melton KC (instructed by **Fletchers Solicitors**) for the **Claimant**
Charlotte Jones (instructed by **DAC Beachcroft LLP**) for the **Defendant**

Hearing date: 5th March 2026

Approved Judgment

Her Honour Judge Claire Evans :

1. This case concerns whether MIM has any prospect of succeeding in his claim for damages for psychiatric injury he suffered as a result of witnessing the labour of his wife and subsequent delivery of his son who, due to the admitted negligence of the Defendant in the management of the labour, was born requiring resuscitation having suffered an acute profound hypoxic brain injury, or whether his claim must fail following the decision of the Supreme Court in *Paul v Royal Wolverhampton NHS Trust* [2024] UKSC 1.

The facts of the claim

2. For the purpose of this judgment I shall proceed on the basis of the Claimant's account.
3. MIM's wife was admitted to the Jessop Wing of the Defendant's Royal Hallamshire Hospital in the evening of 30th May 2020 for induction of labour. Syntocinon was given on the evening of 31st May and labour progressed through the night into the early hours of 1st June. At 0650 she wanted to start pushing. The CTG trace deteriorated (on the Claimant's case) from 0810 onwards. MIM's son was born by spontaneous vaginal delivery at 0947. He was in a poor condition and required resuscitation and subsequently therapeutic cooling in the NICU. As a result of witnessing the labour and birth MIM has developed an adjustment disorder.
4. The Defendant admits that the labour was managed negligently in that there was a deteriorating CTG trace, MIM's son should have been delivered at 0930 and was not delivered until 0947. It admits that delivery by 0941 to 0944 would have avoided all injury.
5. MIM remained with his wife throughout the labour and delivery. He sets out his subjective experiences in the Particulars of Claim as:
 - (a) The monitor on his wife's abdomen beeped an alarm every now and again and the midwife pressed a button to silence it; the midwife seemed irritated that it was going off so often; the Defendant's staff reassured them that the baby was alright but MIM and his wife remained concerned as to the baby's wellbeing given how often the monitor was going off
 - (b) The consultant told them that he would allow an extra 15 minutes for things to progress before he would have no alternative but to help her deliver [this was probably at 0855 when review in 15 minutes was planned, but did not actually take place because the consultant and labour ward co-ordinator were delivering another baby]
 - (c) Later they were told that the baby's heart rate was low and an episiotomy was needed to aid delivery; MIM felt this was not normal; he

wanted to help and was grateful to be asked by a midwife to watch the monitor for contractions

- (d) He was extremely worried about what was happening; he was asked if he would like to cut the umbilical cord when the baby was born; he perceived the last 30 minutes of the process as horrendous and “panic stations”
 - (e) There was confusion as to who was doing what [it is pleaded that there was confusion as to midwife responsibility between 0800 and 0947].
6. His pleaded case in the Particulars of Claim is that what he witnessed amounted to an “external, traumatic, event which immediately caused injury to his son; the Claimant directly perceived the event and its immediate aftermath”.
 7. The Defence pleads, amongst other things, that nothing in the account pleaded in the Particulars of Claim is capable of constituting an “accident” as required by *Paul*. In particular, the requirement of the injury having been caused by violent external means and/or being external to the primary victim is not met. The Defendant’s case is that this was a medical crisis or medical mishap rather than an accident.
 8. By way of Reply the Claimant pleads that “the episodes he witnessed and experienced did amount to an accident”, alternatively that it is not only an “accident” that can give rise to a claim from a secondary victim.

The application

9. The application before me is to strike out the claim on the basis that the Particulars of Claim disclose no reasonable grounds for bringing the claim, alternatively for summary judgment. Various criticisms are made of the pleadings but for today’s purposes Miss Jones accepts that if MIM can establish that he witnessed an “accident” then he may bring a claim as a secondary victim, and the application must fail.

The Supreme Court decision in *Paul*

10. *Paul* and the 2 conjoined cases each involved claims for psychiatric injury by witnessing the death (or its immediate aftermath) of a close relative from a medical condition which the defendants had negligently failed to diagnose and treat and which proper treatment would have prevented. Mr Paul, for example, suffered a fatal cardiac arrest in front of his daughters. Some 14 months earlier the defendant had negligently failed to investigate his coronary symptoms. Absent the negligence his coronary artery disease would have been diagnosed and treated and he would not have died when he did.
11. The issue in the appeal was whether a claim for damages by a secondary victim could only be brought where the claimant witnessed an accident, that is

“an unexpected and intended event which causes injury (or a risk of injury) to a victim by violent external means” (per Lord Leggatt and Lady Rose, para 24),

or whether witnessing the suffering or death of a relative from illness, termed by Lord Leggatt and Lady Rose as a “medical crisis”, rather than an accident, could in principle found such a claim where the medical crisis was negligently caused (para 53).

12. The conclusion of the court (by a majority of six to one, Lord Burrows dissenting) was that such cases, where the death or manifestation of the injury was caused not by an external traumatic event in the nature of an accident but as a result of pre-existing injury or disease, are not analogous to those involving witnessing an accident and cannot succeed (para 142).

13. At paragraph 105 Lord Leggatt and Lady Rose said

“We think it relevant to note first that the occurrence or manifestation of injury is not part of what defines an accident. An accident is an external event which causes, or has the potential to cause, injury; it is not the injury, if there is one, caused by that event.”

14. The court identified the occurrence and witnessing of an accident as integral in defining the limits of the category of claims by secondary victims in three ways. Of particular relevance here are the first and third:

“First, an accident is, by definition, a discrete event in the ordinary sense of that word, meaning something which happens at a particular time, at a particular place, in a particular way. Whether someone was present at the scene and whether they directly perceived an accident are in most cases questions which admit of a clear and straightforward answer. These criteria for determining whether a person is eligible to claim compensation as a secondary victim therefore have the great merit of providing legal certainty.” (para 108)

...

“A third significant feature of accident cases is that it is often difficult or arbitrary in such cases to distinguish between primary and secondary victims.” (para 110)

15. In contrast

“None of these three significant features of the accident cases is applicable where the claimant suffers illness from witnessing physical injury or illness in another person but does not witness any accident.” (para 111)

“First, as we have seen, in many such cases there is no discrete event comparable to an accident. This is not always true. If a person suddenly and

unexpectedly collapses and dies after suffering a cardiac arrest or some other medical crisis as happened in *Paul* and *Novo*, such an event can be identified with the same degree of certainty as an accident can. But the length of time for which symptoms of injury or disease last before a person recovers or dies is entirely variable. It may be minutes, hours, days or weeks. In *Walters*, for example, the period was 36 hours; in *Shorter* it was around 24 hours (measuring from first manifestation of injury rather than the inception of the underlying cause); in *Sion* it was 14 days. This gives rise to uncertainty about what qualifies as an “event” capable of founding a claim. We have discussed above the intractable difficulties involved in trying to answer that question in a way that is both reasonably certain and not entirely arbitrary. There are no comparable difficulties in determining whether a person has been killed, injured or put in peril in an accident.” (para 112)

...

“Third, in cases where the claimant was not present at the scene of any accident, no question can arise of the claimant suffering psychiatric harm through fear for her own safety or bodily integrity. Any such harm which the claimant suffers can only be of a secondary nature caused by witnessing the injury, illness or death of another person. Allowing the claimant to recover compensation cannot therefore be justified by the practical impossibility and injustice of otherwise having to distinguish between injury caused by fear for the claimant’s own safety and injury caused by fear for the safety of a close family member”. (para 114)

16. Lord Leggatt and Lady Rose, in their review of the previous authorities, noted that in none of the medical negligence cases to which they had been referred had a claim for damages as a secondary victim succeeded save for the claim of Mrs Walters in *North Glamorgan NHS Trust v Walters* [2002] EWCA Civ 1792 (“*Walters*”). Mrs Walters was sleeping in the same room as her baby son in the defendant’s hospital when he suffered a major epileptic seizure. The defendant negligently misdiagnosed him leading to delay in treatment. He was subsequently transferred to a hospital in London. Some 36 hours after the seizure his life support machine was switched off and he died in Mrs Walters’ arms. She succeeded in her claim before the trial judge and the Court of Appeal, on the basis that her experience over the 36 hours was one horrifying event (albeit that it was made up of three discrete events each of which were experienced as sudden by Mrs Walters).
17. Lord Leggatt and Lady Rose noted that Ward LJ in giving the judgment of the Court of Appeal had not considered the requirement that there be an “external, traumatic event in the nature of an accident”. They concluded that had the case been defended on the basis that there was no accident, the claim would have failed because it was clear that the brain damage and death of Mrs Walters’ baby were not caused by an accident (para 120).

18. Similarly, other cases which had failed for various reasons should have failed on the basis that the claimant did not witness an accident (para 122), including that of *Liverpool Women's Hospital NHS Foundation Trust v Ronayne* [2015] EWCA Civ 588. The Claimant's wife underwent a hysterectomy and subsequently suffered complications including septicaemia and peritonitis due to the defendant's negligence. She was readmitted to hospital. Mr Ronayne claimed as a secondary victim. He saw her connected to machines including drips and monitors, shortly before undergoing emergency surgery; he saw her unconscious after surgery, connected to a ventilator and being given intravenous antibiotics, with very swollen arms legs and face; she remained in intensive care for 9 weeks.
19. The court considered various other aspects of the rules applied to secondary victim claims in various cases over the years, rejecting some of the approaches taken by the lower courts. Relevantly to the submissions made in this case, the court held that whilst the claimant must be close in time and space to the accident there is no requirement of closeness in time and space to the defendant's breach of duty (paras 95 and 96).

Must there be an accident?

20. I shall come on to whether the facts pleaded by MIM can be said to constitute an accident, but Mr Melton KC argues on his behalf that, in any event, not only an accident can give rise to a claim by a secondary victim, relying on an extract from paragraph 57 of the judgment of Lord Leggatt and Lady Rose where they said

“We would equally reject the opposite argument made on behalf of the defendants that the use of the word “accident” and the focus on accidents in these cases must mean that only an accident can be a qualifying event capable of giving rise to a claim for damages by a secondary victim.”

21. The context for that part of paragraph 57, which appears relatively early in the judgment, is the court rejecting the argument that there is nothing to be considered in the appeal because the previous authorities are conclusive on the point. Reading the judgment as a whole it is clear that in order to succeed a secondary victim must have witnessed an accident which caused (or had the capacity to cause) injury to the primary victim.

The Claimant's case as to the “accident”

22. In oral submissions Mr Melton identified the “accident” that was witnessed by MIM as a continuum during which he feared the worst and eventually the worst happened. He submitted that the accident ran from the time when MIM observed that the midwives did not appear to know what was going on, and the alarm kept sounding, and culminated in the delivery of his son.

23. He said that it was not always easy to pinpoint the happening of the accident giving rise to the liability to the secondary victim, and pointed to the Hillsborough claims where, he said, one could ask was the “accident” the opening of the gates, the people flowing through the gates, or the witnessing of the crush?
24. Mr Melton further submitted that the word “violent” is not used every time that “accident” is defined in *Paul*. He submitted that “accident” may permit of activities on the ward that could not be characterised as violent and/or external. Where the accident is an external event that has the potential to cause injury, rather than actually causing any injury, it cannot, he said, be a violent event. He submitted that in any event everything done in the management of the mother was external to the baby.
25. He submitted that MIM’s case could be distinguished from *Paul*’s case because in *Paul* and the conjoined cases there was a separation between the medical negligence and the injury: the negligence was remote in time and place to the injury and was not witnessed by the claimants. In contrast, MIM saw everything that went wrong, both breach of duty and outcome, in a relatively short period of time.
26. He submitted that *Walters* could be distinguished on the basis that MIM was very closely involved in, for example, the observing of the monitors, although he accepted that the claim was pleaded on the basis that MIM was a secondary victim rather than that there might be a freestanding primary duty owed to MIM based upon him being asked to monitor the baby.
27. Finally Mr Melton referred to paragraph 123 of *Paul*, where the court noted that in argument the question had been raised as to whether the rules governing claims by secondary victims arising from accidents could ever apply in a medical setting, and declined to give an opinion on the hypothetical factual scenarios raised such as a doctor injecting a patient with a wrong dose or wrong drug causing an adverse reaction witnessed by a family member. He relied upon this paragraph as not limiting the type of event that could give rise to a claim.

Analysis

28. Before analysing how what MIM witnessed relates to the various parts of the definition(s) of “accident” in *Paul*, it seems to me that it is appropriate to stand back and consider how the ordinary person would view it. In my judgment the ordinary person would not say that what happened here was that MIM witnessed an accident which caused injury to his son. The ordinary person would say that MIM witnessed the process of labour and the birth of his son in an injured condition such that he required resuscitation – a description of a negligently caused medical crisis, rather than an accident.

29. One must then cross check that against the definition of accident at paragraph 24 of the judgment as “an unexpected and unintended event which causes injury (or a risk of injury) to a victim by violent external means”.
30. Contrary to the submission that it is not always easy to pinpoint the happening of the accident, an essential part of the reasoning of Lord Leggatt and Lady Rose as set out in paragraph 108 of the judgment is that an accident is “a discrete event...something which happens at a particular time, at a particular place, in a particular way”. In other words, it is something where its happening can indeed be pinpointed, so that the test for whether someone can recover as a secondary victim has clarity and legal certainty.
31. The example suggested of the difficulty in pinpointing the accident in the Hillsborough cases conflates the accident with the breach of duty. The secondary victim must witness the accident which is caused by the breach of duty to the primary victim but need not witness the breach of duty itself, and they need not be close in time to each other.
32. It cannot be said then, in my judgment, that the matters pleaded in the Particulars of Claim as constituting the accident and summarised in paragraph 22 above constitute a discrete event, happening at a particular time, at a particular place, in a particular way. The very use of the word “continuum” to characterise the “accident” suggests the opposite of a discrete event.
33. Nor, it seems to me, can they be said to amount to an unexpected and unintended event which caused injury to MIM’s son by external means, whether violent or otherwise. The sounding of the alarm on the monitor, for example, was not itself an unexpected or unintended event during the course of a labour. It may have been a manifestation of the injury, but it was not the direct cause of the injury. The injury arose as a result of the period of hypoxia that itself arose during the bodily process of labour and birth. It is hard to see how it is possible to draw any distinction between the failure here to expedite delivery, which would have resulted in MIM’s son being born uninjured, and the failure to diagnose Mr Paul’s coronary artery disease which would have then avoided his fatal cardiac arrest, or indeed any of the other cases where the court noted that the proposed secondary victim witnessed not an accident causing injury by external means, but a negligently caused medical crisis.
34. The distinction which Mr Melton sought to make between this case and those, that there was here a close temporal connection between the negligence and the injury, cannot in my view be drawn in the light of the court’s finding that there need not be such a connection in order for a secondary victim to recover.
35. Insofar as Mr Melton relied on the fact that everything happening in the management of the mother is external to the baby, that does not assist MIM either. There is still no “accident” upon which MIM can found his claim. No accident happens to the mother, and any effect the ordinary internal workings of

the mother's body may have had upon the unborn baby (leaving aside whether they can properly be described as external to the baby) cannot in and of themselves be described as an accident in any normal sense either.

36. It is right to say that the decision in *Paul* does not preclude a secondary victim from ever succeeding in a claim arising out of clinical negligence (although as Lord Burrows said in his dissenting judgment, it will only be in rare cases that such a claim will succeed). The court left open in paragraph 123 the question of whether the hypothetical scenarios canvassed there might constitute an accident. But that does no more than make clear that whether what a claimant witnessed amounted to an accident or a medical crisis will be a question to be decided on the facts of each individual case. It does not assist this Claimant where the facts are such that they cannot in my judgment constitute an accident.

Conclusion

37. It follows then that the facts as pleaded here do not disclose any legally recognisable claim against the Defendant, because they cannot amount to the witnessing of an accident as is required for MIM to be able to recover as a secondary victim. As in the conjoined appeals in *Paul*, the claim falls to be struck out under CPR 3.4(2)(a).
38. I should end by expressing my sympathy to MIM and his wife and son. The striking out of the claim is not to minimise in any way the seriousness of the Defendant's negligence, nor the events which occurred at a time which should have been one of great joy for MIM and his wife but instead resulted in such distress, and had such far-reaching consequences for their family.