

## Personal Injury



## Devereux Personal Injury and Clinical Negligence Settlement Update: Winter 2022

Posted on 06 February, 2023 by [Stephen Killalea](#) | [Robert Weir](#) | [Colin Mendoza](#) | [Christopher Walker](#) | [Stephen Cottrell](#) | [Rob Hunter](#) | [Sam Way](#) | [John Platts-Mills](#)

Members of the Devereux Personal Injury and Clinical Negligence Group regularly act in high-value and high-profile claims, with a long-established reputation for dealing with all types of accident and disease cases. Set out below are the details of some of the recent settlements reached by [Stephen Killalea KC](#), [Robert Weir KC](#), [Colin Mendoza](#), [Christopher Walker](#), [Stephen Cottrell](#), [Rob Hunter](#), [John Platts-Mills](#) and [Sam Way](#).

The settlements achieved by Devereux members help the injured parties and their families with access to ongoing care, support and accommodation, thus improving their quality of life.

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### Stephen Killalea KC

Steve acted for a farm employee in an accident at work in which the Claimant sustained incomplete tetraplegia. Compromised for £5 million at JSM. Steve was instructed by Damian Horan and Anna West of Aspire.

Steve represented a 52-year-old primary school teacher who was rendered paraplegic and sustained a brain injury in a RTA. Case settled at a JSM for £7,200,000 (provisional damages for syrxinx). Instructed by Nikki Golding of Irwin Mitchell.

Stephen Killalea KC acted for a brain damaged Claimant in an employer's liability case establishing liability against the employer, subject to a reduction for contributory negligence. The case involved substantial legal issues including employee definition, employer's liability for independent contractor, non-delegable duties of employer and application of Employer's Liability (Defective Equipment) Act 1969. Mr Justice Knowles found that Brands Transport Ltd was liable for the claimant's injuries. The claimant was found contributorily negligent, and damages were then reduced by 40%. Thus, the judgment was made for the Claimant for 60% of his damages to be assessed. This judgment serves as a detailed and comprehensive review of specific areas of personal injury claims in the context of employment. Stephen Killalea KC was instructed by Stephen Nye of Irwin Mitchell.

### Rob Weir KC

Rob Weir KC acted for the claimant who sustained a very severe traumatic brain injury back in 1993. Her case was apparently “settled” in 1998 with payment of over £1m. But the “settlement” was never approved and much of those funds were dissipated by a family relative. When the claimant went to new solicitors in 2016, an application was made to pursue the original claim on the basis that the claimant never had capacity to litigate such that the “settlement” was not binding on her. Shortly before a 5-day hearing to determine this issue, the defence insurer conceded the point. The claimant’s claim against the original defendant was settled in December 2022 on the basis that the 1998 payment was, in fact, an interim payment. The new settlement for £13.75m was approved by the court in January 2023. Rob was instructed by Cari Sowden-Taylor of Hugh James solicitors.

Rob Weir KC was instructed to take a mesothelioma case to appeal in a case which was proceeding on quantum against, on the face of it, the wrong defendant after the defendant had allowed judgment in default to be entered against it. The Deputy High Court Judge had held that the “relief from sanctions” provisions at CPR 3.9 did not apply to the application to set aside judgment in default under CPR 13.3. Rob drafted the application for PTA to the CA on the basis that the DCJ should have held that the “relief from sanctions” provisions did apply and obtained permission to appeal from Bean LJ with an expedited hearing date. The case then settled shortly before the CA hearing. Rob was instructed by Helen Childs of RWK Goodman solicitors.

Rob Weir KC settled claims for over 10 claimants following a road traffic accident in France when a successful young businessman, husband and father died. Under French law, multiple family members were entitled to bring claims, including by a relative who was not present at the scene but suffered psychiatric injury affecting his business. Rob was instructed by James Riley and Phil Banks of Irwin Mitchell solicitors (Birmingham office).

Rob Weir KC acted for Ageas, the defence insurer, and settled a claim brought by a man with T5 AIS B spinal cord injury. The case involved difficult issues over life expectancy and whether the claimant, who had moved to London following the accident, was entitled to recover for the much more expensive property he had subsequently purchased. Rob was instructed by Paul Stephens of Keoghs solicitors.

Rob Weir KC acted for a claimant who had suffered C4 AIS A spinal cord injury and who still had a tracheostomy in place. The case settled on a confidential basis for a lump sum payment under which the claimant was entitled to continue to seek state funding which was currently providing full double-up 24/7 waking night care. Rob was instructed by Stephen Nye of Irwin Mitchell solicitors (Birmingham office).

Rob Weir KC acted for a teenager who suffered cerebral palsy due to the admitted negligence of the defendant. His case was settled and approved in December 2022. Rob was instructed by Anne Kavanagh of Irwin Mitchell solicitors (London office).

Rob Weir KC acted for a child, knocked down whilst crossing the road to get to the coach, which was organised by the council to take him to school. The claimant sustained a traumatic brain injury in the accident. On day 3 of the trial, and after 4 of the council witnesses had been cross-examined as to the system in place for organising bus routes to school, the council compromised the claim. Rob was instructed by Tim Jones of Enable Law solicitors.

## **Colin Mendoza**

Colin, led by Stephen Killalea KC, acted for GS, a 59-year-old male with significant pre-existing medical issues, who suffered incomplete tetraplegia as a result of spinal cord injury in a road traffic accident in which he was not wearing a seat belt. Liability was heavily disputed even though the Defendant had emerged from a side road, with it being in issue whether the Defendant had first stopped at the Give Way lines before entering the main road, the course taken by the Defendant on entering the main road and whether GS was speeding. Accident reconstruction evidence was relied on by both sides with counsel involved in its preparation for disclosure. The case settled for £4.075 million at a JSM in November 2022 after a 25% reduction. The case included complex claim for future accommodation, with GS living in a mobile home at the time of the accident, and for the latest developments in aids and equipment for an incomplete tetraplegic, including an exoskeleton suit to assist mobility. Colin was instructed by David Sears and Joanne Poynton of Minster law.

Colin, unled, acted for JH, who sued an ambulance trust for negligence after a 2-person ambulance crew had attended her home in response to her telephone call for help to deal with a severe headache. It was common ground that by the

time the crew left, the symptoms were much better but there was real dispute about the nature of any advice given to JH and her partner about whether she should be admitted via ambulance to hospital. JH had suffered a subarachnoid haemorrhage (SAH) the following day leaving her with lasting disability and a lack of capacity. One member of the ambulance crew maintained JH had declined to be admitted to hospital, with her witness statement evidence supplementing what was in the contemporaneous ambulance records, whilst the other crew member had no such independent recollection and relied on the contemporaneous notes. Liability was heavily in dispute. The ambulance trust also disputed causation, arguing with supportive expert evidence that admission on the day before the SAH would have made no difference to the eventual outcome, bearing in mind how JH would probably have been treated and the inevitable delays in securing such treatment, including the delay in transfer to a regional neurosurgical centre. The trust also relied on a plea of contributory negligence – that JH should have followed advice from the crew to seek medical advice from her GP the next day in the event that symptoms continued. Colin advised throughout the claim, including on the lay and expert evidence necessary to respond to the defence. Case settled for £1.35 million at a JSM and was subsequently approved by the Court, with no admission of liability. Colin was instructed by Ben Priestley and Jerard Knott of Serious Law LLP.

### **Christopher Walker**

34-year-old female suffered very severe lower limb & multiple other injuries. A number of surgical interventions failed both to restore reasonable function & remove pain. An elective amputation remained an option, but CRPS & ENT diagnoses complicated the process. The Claimant, represented by a silk, pursued damages of over £17.5 million. Christopher, acting alone for the Defendant achieved a £3.5 million settlement (Jan 23). Christopher was instructed by Bryn Hesketh of Morris Orman Hearle.

A 38-year-old male motorcyclist suffered crush injury to their leg, culminating in below knee amputation. Liability in dispute. Acting for the Claimant, the claim settled for £2.5 million. Christopher was instructed by Edel Selby of Minster Law.

Claimant passenger suffered significant TBI and orthopaedic injuries when the car in which he was travelling hit a tree. Contributory negligence alleged. A settlement of £1.7 million was reached, subject to Court approval. Christopher was instructed by Paul Stephens of Keoghs.

A 36-year old male was electrocuted while working from a step ladder. He fell to the ground and sustained a severely traumatic brain injury. Contributory negligence alleged. Settlement at a value of £1.5 million, again subject to Court approval. Christopher was instructed by Claire Howard of Irwin Mitchell

### **Stephen Cottrell**

LRT v Jones & Aviva. Led by Stephen Killalea KC, this was a very high value personal injury claim. The Claimant suffered an extremely serious traumatic brain injury which caused him to be wheelchair-bound and in need of 24-hour professional care. He had previously been a teacher. The claim settled at a joint settlement meeting for £10M. Stephen was instructed by Jonathan Clement of CL Medilaw.

MCY v Frank Neate. A settlement for £1.3M at a JSM in July 2022 of a fatal accident case. The deceased was a foreign-born self-made businessman. There were complex issues around his earnings. The widow and children had moved abroad following the accident. Settlement was approved by the High Court in September 2022. Stephen was instructed by Leanne Keating of Bridge McFarland.

### **Rob Hunter**

In MXT v Public Health Wales & Others, Rob was instructed by Christopher Hurlston of Irwin Mitchell Birmingham to act for a young mother and subsequently her husband and family after she died from cancer that had become incurable because of the negligence of three defendants.

This was a tragic case where the deceased had two young children, was seriously ill for a long time before her death, and was at the beginning of a promising teaching career. It was also complicated by an allegation of contributory

negligence made against the deceased for the alleged failure to attend a smear test. Settlement was approved in October 2022.

In *WS v DM & Another*, Rob was instructed by Bethany Sanders and Katherine Wilkinson of Leigh Day to act in a fatal accident claim where there was a major dispute about valuation of the deceased's preferential employment benefits. The Claimant rejected a substantial written offer and the case was litigated. The claim settled for a seven-figure sum at a joint settlement meeting December 2022.

### **John Platts-Mills**

John, instructed by Imogen Lowden of Irwin Mitchell London, secured a six-figure settlement at JSM for a client who suffered significant orthopaedic injuries as a consequence of a fall from a ladder in the course of their employment.

John and Declan French of Irwin Mitchell Bristol, successfully settled a six-figure claim brought by a client involved in a complex RTA as a pedestrian.

John and Amey Welch of Irwin Mitchell London successfully settled a claim for a client who suffered a complex ocular injury as a consequence of being splashed with potassium hydroxide in the course of their employment.

### **Sam Way**

Sam acted for an electrical apprentice who brought a claim against his employers following a fall through a roof. The Claimant brought a substantial claim for loss of earnings for the delay caused to his qualification and subsequent career path. The claim settled following a CCMC for a confidential sum. Sam was instructed by Imogen Lowden of Irwin Mitchell.

Sam acted for a Claimant who suffered severe lacerations to his hand when packing boxes into a self-storage unit. The claim settled for a confidential sum following the service of proceedings. Sam was instructed by Jon Wilson of Dawson Hart.

Sam acted for a gardener who suffered a comminuted radial head fracture in his elbow following a fall at a building merchant. Settlement was achieved for a confidential sum in the face of a substantial challenge to liability. Sam was instructed by Jon Wilson of Dawson Hart.