

CLINICAL NEGLIGENCE

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Purpose of talk:

- 1) Review position arrived at in clinical negligence cases
- 2) Relevance of clinical negligence to general insurance market
- 3) Breach of duty and causation in clinical negligence cases
- 4) Current major issues on quantum
- 5) Likely future developments

Topic 1: Current position in clinical negligence



- development from low base level in 1960s and 1970s
- likely explanations for low base level
 - respect for doctors
 - doctors closing ranks
 - litigation culture in general

- expansion of litigation to current position
- likely explanation for current level of litigation
 - erosion of trust
 - more open medical culture
 - availability of state funding
 - absence of limitation periods in cases of disability
 - litigation culture generally

Increasing damages

- 1987 Pritchard v. Cobden – record £434,000
(reduced on appeal)
- 1998 Biesheuvel v. Birrell £9,281,000

- Major areas of increase:
 - (a) multipliers
was maximum 16
now 10 year old female normal life expectancy 32
 - (b) care claims
Hunt v. Severs (93) total residential care claim £25,550 now
commonly £100,000
 - (c) general damages
 - (d) inventive claims

Topic 2: Relevance of clinical negligence to general insurance market

- private insurance arrangements
- successive torts

Baker v. Willoughby 1970 AC 467

- subsequent illness

Jobling v. Associated Dairies 1982 AC 794

- mismanaged litigation

Topic 3: Breach of duty and causation in clinical negligence cases

- The Bolam test
- factual causation after Bolam
- difficult issues of causation
- partial causation

Topic 4: Current major issues on quantum



- Life expectancy
- Group living
 - care
 - accommodation
- State funded care
- Loss of earnings and universal university education
- Investment costs and Page v. Plymouth 2004
EWHC 1154

Topic 5: Likely Future Developments



- Periodical payments
- Re-organisation of government-funded compensation

