

Lauren Sutherland KC

Lauren called to the Scottish bar in 1996 and took silk in 2016. In Scotland she is a member of **Ampersand Advocates**, Edinburgh

<https://ampersandadvocates.com/people/laurensutherland-qc/>

Lauren is also qualified in England and Wales and works from **Byrom Street**, Manchester, <https://www.byromstreet.com/members/lauren-sutherland-qc-scot>

Lauren has advocacy experience gained over 30 years in both personal injury and clinical negligence work. She has considerable experience in catastrophic injury cases and has a particular interest and expertise in cerebral palsy, cancer and brain injury cases. She was instructed in the Scottish Product Liability cases relating to transvaginal mesh. She is instructed in personal injury Group Litigation in Scotland involving musculoskeletal injuries sustained by Kenyan tea-pickers. She has been involved in a number of neurosurgical cases relating to failures of the now disgraced neurosurgeon Professor El Jamel.

She appears regularly in court and has appeared in Scotland in the Sheriff Court, Outer House of the Court of Session, First and Extra Division of the Appeal Court and the Supreme Court. She has conducted many complex Fatal Accident Inquiries into hospital deaths. She has conducted one of the few clinical negligence jury trials that has taken place in Scotland.

She is ranked in Chambers UK (Band 1) and The Legal 500 for Clinical Negligence .

Chambers UK have said:

"She's got an encyclopedic knowledge and she handles complex cases with ease." (Chambers 2022)

Strong silk who brings her skills to bear in the full array of clinical negligence and personal injury cases. She is adept at navigating complex causation and quantum issues and is especially knowledgeable about claims relating to cerebral palsy, brain injuries and fatal incidents. Instructing solicitors frequently praise her for her medical knowledge. (Chambers 2021)

“Excellent on her feet and very well prepared.” (Chambers 2021)

“She is pragmatic, great at managing expectations and very practical.” (Chambers 2021)

“She has an apparently inexhaustible energy to prepare and argue some of the most ground-breaking cases”, “A highly regarded and experienced advocate recognised for her personal injury and medical negligence experience” (Chambers 2020)

“She is absolutely superb, and she fights a client’s corner pretty fiercely... hugely knowledgeable and really applies herself”.

In the 2016 edition she is described as *“Deeply knowledgeable in medical negligence matters. I don’t think you could find a more committed advocate to medical negligence cases.” “She’s a real leader in this field; the most specialised claimant clinical negligence advocate in Scotland”.*

In 2017 Chambers say of her *“Her knowledge of the legal and medical aspects of the cases she handles is phenomenal” “Absolutely superb at medical negligence cases. She goes the extra mile to understand the expert knowledge.”*

She is a CEDR accredited mediator. She is clinical negligence lead for PEOPIIL a not-for-profit organisation that seeks to promote judicial co-operation and mutual knowledge of legal and judicial systems in European jurisdictions. She was secretary to the Professional Negligence Bar Group. She is a member of the Commonwealth Lawyers Association and the American Association of Justice (AAJ)

She was part of the legal team for the claimant in the landmark case of *Montgomery v Lanarkshire Health Board* and presented the first argument for the claimant in the Appeal Court in Scotland. She returned to the Supreme Court this year with another consent case considering how you define reasonable treatment options.

In 2009 she was one of two Counsel appointed by the Scottish Government to lead the Vale of Leven Public Hospital Inquiry into the outbreak of *C difficile* at the hospital. This lasted 3 years

and was an extensive inquiry into medical and nursing issues and infection control. She was also invited to participate in the review panel led by Professor Sheila McLean into the introduction of no-fault compensation in Scotland.

She has lectured extensively to lawyers and doctors on clinical negligence and personal injury and for many years she taught consent to undergraduate dental and medical students. She teaches doctors on court craft and writing reports in conjunction with Inspire Medilaw a provider of first-class conferences for lawyers and doctors.

Since 1995 she has been the contributing editor on clinical negligence to the Reparation Bulletin in Scotland and she contributed the chapter on Medical Law and Human Rights to the main Scottish textbook on Human Rights.

She has written a book on the law on consent post *Montgomery* and this is published by Law Brief Publishing and is also available on Amazon with authors proceeds going to children with special needs.

Lauren has a blog where she posts articles on issues of law and medicine.
laurensutherlandqc-lawandethics.com

Medical/Clinical Negligence Law cases that have proceeded in court

Almond-Roots v El Jamel and NHS Tayside CSOH 130

https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2021csoh130.pdf?sfvrsn=4c25c0a_1

This was a claim for cauda equina as a result of failures in diagnosis and surgery against a surgeon on a private basis and against the hospital where the pursuer was treated.

Eventually liability was admitted. Damages were eventually agreed but the case proceeded on apportionment of liability between the defenders. Damages were nearly 3 million pounds which was one of the highest settlements in a cauda equina case.

Jennifer McCulloch v Forth Valley Health Board [2021] CSIH 21

<https://scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2021csih021.pdf?sfvrsn=0>

This was the appeal heard by the Second Division of the Inner House in Scotland in the previous case related to misdiagnosis of a pericardial effusion and consent

Widdowson v Liberty Insurance NHS Grampian NHS Highland [2021] CSOH 15

<https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2021csoh015.pdf?sfvrsn=0>

This was a fatal case and an action was brought against both the insurers of a car involved in a road traffic accident which caused injury to Mr Widdowson and also two hospitals for failures in care after the accident. All have eventually admitted liability for the death. The case is important in considering issues of apportionment of responsibility amongst the defenders and the principles to be applied.

Jennifer McCulloch and others v Forth Valley Health Board [2020] CSOH 40

Proof over 8 days in which the pursuers claimed that there had been negligence in a cardiologist's care. There were difficult issues relating to diagnosis of a pericardial effusion and consent https://www.bailii.org/scot/cases/ScotCS/2020/2020_CSOH_40.html

Vincent Friel v Dr Brown [2019] CSOH 30; [2020] CSIH 7

Procedure Roll Debate and Reclaiming Motion on the effect of S10 of the Law Reforms (Misc Prov) (Scotland) Act 1968 and what constitutes abuse of process in Scotland

Allan Johnston v NHS Grampian [2019] CSOH 90

Clinical Negligence case on consent

[James Carr v R H Independent Health Care Limited \[2018\] CSOH 82](#)

Procedure Roll Debate on the procedural issues of the effect of a decree of reduction

[Montgomery v Lanarkshire Health Board \[2015\] UKSC11](#)

Landmark case on consent to medical treatment in front of 7 judge bench at UKSC. Cerebral palsy case involving diabetic mother with large baby who was not advised of the risks of mechanical problems in labour or shoulder dystocia. Shoulder dystocia occurred during delivery and the child was born with cerebral palsy and a brachial plexus injury. Inner House decision [2013] CSIH 3; 2013 SC 245

[Ryan Coyle v Lanarkshire Health Board \[2014\] CSIH 78](#)

Appeal by the Health Board against the decision of Lord Tyre in the first instance. Appeal related to the question of whether he correctly interpreted the evidence in relation to the timing of delivery. The appeal was unsuccessful.

[Ryan Coyle v Lanarkshire Health Board \[2013\] CSOH 167](#)

Cerebral palsy case involving delay in delivery of child. The case involved allegations of obstetric and midwifery negligence. Was one of the few cerebral palsy cases that have proceeded successfully to proof.

Evelyn Telfer on behalf of Mirren Telfer v The Royal Infirmary of Edinburgh NHS Trust

Cerebral palsy case proceeded to proof on all issues but settled after a week of evidence following admission of fault.

Marika Komori v Tayside Health Board [2010] CSOH 30

Case involving an injury sustained following an arterial blood sample Sought recovery of all documentation held by the Health Board in relation to the complaint made by the claimant

Brenda Louise Rennie v Lothian Health Board [2010] CSOH 61

This was a cerebral palsy case which considered the issues of delay and mora in the context of litigation.

Greenhorn v South Glasgow University Hospitals NHS Trust [2008] CSOH 128

The claimant suffered nerve damage following a colposuspension procedure. Considered the issue of res ipsa in the context of clinical negligence

Hepburn v Royal Alexandra Hospital and Another [2008] CSOH 81

Argument in the Outer House relating to delay in progress of litigation in the context of a clinical negligence claim

J.S. v Lothian Health Board 2009 SLT 689

This case related to a failure in testing for cystic fibrosis. The case considered the important issue of the non delegable duties of Health Boards in terms of matters such as test results

Rosemary Lenton v Ayrshire and Arran Health Board

Involving a knee replacement surgery without prophylactic antibiotics which resulted in gross destruction of the knee with the result the claimant was wheelchair bound. Issues of orthopaedic negligence.

Learmont v Dr Vernon

Action against a GP following the death of a young woman with meningitis. Difficult issues related to causation and whether the death could have been avoided had she been referred to hospital at an earlier date

Zoe Campbell v Highland Health Board

Cerebral palsy case involving a breach delivery which proceeded to proof on all issues and then settled after evidence.

Eric Robertson v Forth Valley Health Board (Extra Division)

Full evidential appeal before the Extra Division which settled after a number of weeks of hearing

Eric Robertson v Forth Valley Health Board 13/4/2005

(Temporary Judge Coutts) Clinical negligence case related to the failure to diagnose an aneurysm resulting in the patient suffering a stroke when he underwent surgery

Christopher Muir and Others v Grampian Health Board Lord Abernethy CSOH 17/3/2000

Fatal case following the death of a woman as a result of a heart attack. Issues of whether she should have been recognised as at risk of cardiac problems and whether she should have been discharged from hospital. One of the first cases to raise the issue of whether pursuer's should lead in evidence the doctor's being blamed.

Maureen Trodden v Greater Glasgow Health Board

Case involving breast reduction surgery which left the pursuer with grossly reduced breasts. Issues of negligence in cosmetic surgery.

Richard Adamson v Lanarkshire Health Board

Medical Negligence jury trial. A young boy had a swelling in his testicle and this was removed without testing on the assumption that the swelling was cancerous. Subsequently confirmed to be a blood clot. One of the few medical negligence cases that has proceeded to jury trial.

Desmond McCafferty v Greater Glasgow Health Board

Limitation argument in relation to raising of proceedings in a Clinical negligence case

PUBLIC INQUIRES AND INQUIRES INTO DEATHS

Vale of Leven Hospital Inquiry

This was set up by Scottish Government and Chaired by Lord McLean to investigate deaths at the Vale of Leven Hospital as a result of C difficile infection. She was appointed as the Junior Counsel to the Inquiry which lasted over 3 years and published in November 2014. The Inquiry had a wide ranging remit to review issues of nursing practice, medical practice, tissue viability, nutrition in the elderly, infection control and clinical governance.

Inquiry related to the Glasgow Airport Rail link

Junior Counsel instructed in the planning Inquiry related to the Glasgow Airport Rail link. This was a proposed rail link between Glasgow Central Station and Glasgow Airport

Inquiry into the death of Debra Law

(represented the family) Related to the death of a young woman following the administration of an anaesthetic by a junior doctor and required a detailed knowledge of anaesthetics and the technique for rapid sequence induction

Inquiry into the death of Linda Gibson

(represented the family) Related to the death of a young woman following coning of her brain. This was a lengthy Inquiry with complex medical evidence in relation to epilepsy, neurology, infection and the mechanism of brain swelling together with the interaction of drugs on this process

Inquiry into the death of Stephen Miller

(represented the family) Related to the death of a young boy following a massive pulmonary thromboembolism and involved complex issues in relation to haematology, the mechanism of clotting and the interaction of drugs on this process

Inquiry into the death of Simon Dolan

(represented the family). Related to the death of a child with Cornelia de Lang Syndrome where there was malplacement of a feeding tube. Paediatric issues and nursing negligence

Inquiry into the death of George Fairlie

(represented the family) Related to the death of an elderly man in a Care Home. This lasted nearly 9 weeks in Paisley Sheriff Court. The case had a number of complex medical issues relating to dementia, pressure damage, vascular issues and diabetes and medical care of the elderly. In addition issues in relation to Social Work Care and the workings of the Care Commission

Inquiry into the death of Lorraine McGalliard

(represented the family). Related to the death of a young girl following an undiagnosed tortored ovarian cyst. Gynaecological and surgical negligence

PERSONAL INJURY LAW

Widdowson v Liberty Insurance NHS Grampian NHS Highland [2021] CSOH 15

This was a fatal case and an action was brought against both the insurers of a car involved in a road traffic accident which caused injury to Mr Widdowson and also two hospitals for failures in care after the accident. All have eventually admitted liability for the death. The case is important in considering issues of apportionment of responsibility amongst the defenders and the principles to be applied.

Hughes v Turning Point Scotland [2019] CSOH 42, 2019 S.L.T. 651

Claim for Damages in respect of a duty of care owed by a charity to a man who attended in withdrawal from alcohol. Issues of whether *Huntley v Hanley* test applied to the actions of the charity, whether they were rescuer in law, duty of care and contributory negligence.

Gloria Urquhart v Fife Primary Care NHS Trust

(Lord Brodie) Nursing personal injury case

Public inquiries & Fatal Accident Inquiries

ADMINISTRATIVE LAW AND JUDICIAL REVIEW

Petition of Lauren Joan Fergie [2008] CSOH 117

Petition for review of the eligibility criterion of the Skipton Fund which restricted payment to representatives of persons who died having been infected with Hepatitis C as a result of infected blood products or tissue from the NHS.

Petition for Judicial Review of Fairlie

Judicial Review in relation to the administration of the Skipton Fund in relation to compensation payments for Hepatitis C

Petition for Judicial Review of Hayleigh Reynolds

Judicial Review in relation failure to provide drug treatment to a young girl

Petition Cameron Fyfe v The Council of the Law Society and Others (Inner House) 2017

CSIH 6

ARTICLES AND PUBLICATIONS

Lauren has written extensively in the area of personal injury and medical negligence. She is the author of '*A Guide to Consent in Clinical Negligence Post-Montgomery*' published by Law Brief Publishing (2018), contributing editor of Green's Reparation Bulletin on Medical Law and wrote the chapter on Medical Law and Human Rights in Greens Human Rights Loosleaf.

Published Book

Sutherland QC: '*A Guide to Consent in Clinical Negligence Post-Montgomery*', Law Brief Publishing, 2018.

Published Articles

Since coming to the Bar she has published a number of Articles in the area of Personal Injury and Medical Negligence. She is also a Contributing Editor to the Reparation Bulletin and produces regular reviews and comment on cases decided in the area of medical negligence.

- **Who carries responsibility -moral blameworthiness and causative potency**
Carolyn Almond-Roots v El Jamel and NHS Tayside Reparation Bulletin 2022
- **Meadows v Khan**
- **The right of patients to make autonomous choices: Montgomery v Lanarkshire Health Board: a landmark decision on information disclosure to patients in the UK.** Int Urogynecol J (2021)
- **Does the Bolam Test apply to disputes of fact between experts?** Reparation Bulletin February 2020, issue 152
- **The quality of evidence of normal practice in information disclosure cases post Montgomery.** Reparation Bulletin 2019, 150, 2-4 – Comments on the Supreme Court of Australian Capital territory decision in *Kempster v Healthscope Operations Pty Ltd* on whether a nurse who claimed to have used standard or invariable

practice had failed to adopt the standard of care to be expected of a nurse in that position and the evidential weight to be attached to such assertions.

- **Is coincidental causation sufficient to found liability?** *Reparation Bulletin* 2019, 147, 4-6 – Comments on the case of *Khan v MNX (CA)* on whether a general practitioner who failed to establish that a patient was a carrier of the haemophilia gene was liable in law for the child's autism as well as haemophilia where the mother would not have become pregnant if she knew she was a carrier. Discussed the 'scope of liability' test and its application in the UK.
- **Montgomery: Myths, Misconceptions and Misunderstandings** *Journal of Personal Injury Law* Issue 3 2019 – Comments on the arguments made in *Montgomery v Lanarkshire Health Board* in the Supreme Court and the implications of the decision with an analysis of some of the decisions since the case was decided.
- **The Bolam and Hunter v Hanley tests following Montgomery** *Reparation Bulletin* 2018, 144, 5-8 – Comments on *AH v Greater Glasgow Health Board* on whether doctors failed in their duty of care by failing to advise on the risks inherent in the use of vaginal mesh products. Considers the impact of *Bolam v Friern Hospital Management Committee* and *Hunter v Hanley* and whether the cases still apply to consent cases.
- **LT v Lothian NHS Health Board** *Reparation Bulletin* 2018, 143 5-8 – Brain damage during birth case where the allegation was the Registrar negligently misinterpreted the CTG trace and failed to expedite the birth. Considers the issue of conflicting expert evidence, impartiality, disclosure and consent.
- **Causation in wrongful birth cases** *Reparation Bulletin* 2018, 140, 6-8 – Considers the case of *Meadows v Khan (QBD)* on whether there was liability for losses sustained by a woman who had a child with both autism and haemophilia when the woman had only sought to avoid having a child with haemophilia.
- **AW as legal representative of LW v Greater Glasgow Health Board. Reparation Bulletin** 2017, 138, 6-8 – Comments on *AW v Greater Glasgow Health Board* in which a reclaiming motion was refused in relation to the dismissal of an action against 2 midwives in relation to damage suffered by a child pre-delivery.
- **Malone v Greater Glasgow and Clyde Health Board** *Reparation Bulletin* 2017, 135, 5-7 – Comment on the Outer House decision in *Malone* which was an action for damages against a Health Board in respect of the clinical negligence on the part of a Haematologist which resulted on the claimant suffering a stroke.
- **The introduction of consent cases to existing cases following Montgomery** *Reparation Bulletin* 2016, 133, 3-6 – Considers with reference to the case law the position on introducing a consent case late in a medical negligence proceedings in the aftermath of *Montgomery v Lanarkshire Health Board*

- **KR v Lanarkshire Health Board** Reparation Bulletin 2016, 132, 6-8 – Examines the Outer House ruling in *KR v Lanarkshire Health Board* where the issue was whether the Registrar managing the labour was under a duty to make the patient aware of the material risks involved in her labour in accordance with the principles found in *Montgomery v Lanarkshire Health Board* and offer a caesarean section or assisted delivery.
- **Medical Negligence Update** Reparation Bulletin 2016, 131, 6-8 – Comments on the Privy Council ruling in *Williams v Bermuda Hospitals Board* the Queen’s bench ruling in *Tasmin v Barts Health NHS Trust* and the QBD ruling in *SXX v Liverpool Women’s NHS Foundation Trust*
- **Consent to medical treatment and provision of inaccurate information in risks** **Reparation Bulletin** 2015, 127,5-7 – Examines the Queen’s Bench Division ruling in *Connolly v Croydon Health Services NHS Trust* on whether a hospital failed to obtain informed consent to a procedure and whether its continuing treatment of the patient after she had withdrawn her consent invalidated the lawfulness of treatment. Considers whether the right to withdraw consent can be overruled in life threatening situations.
- **Consent post Montgomery** **Reparation Bulletin** 2015, 126, 6-8 – Comments on the Queen’s Bench Division ruling in *FM v Ipswich Hospital NHS Trust* on whether to award damages for clinical negligence which resulted in brachial plexus injury during childbirth on the ground that the hospital failed to discuss the risks of possible shoulder dystocia with the mother prior to labour.
- **Causation issues midwifery negligence** **Reparation Bulletin** 2015, 125, 6-8 – Assesses the Outer House ruling in *W v Greater Glasgow Health Board* on whether the failure by midwives to refer to hospital a woman who was 20 weeks’ pregnant and displaying symptoms of pre-eclampsia had: (1) caused a delay in the birth of her son; and (2) if so, that delay had caused her son to develop a brain injury.
- **Causation issues in consent cases: where are we now following the decision of the Supreme Court in Montgomery?** **Reparation Bulletin** 2015, 124, 3-6 – Comments on the Supreme Court judgment in *Montgomery v Lanarkshire Health Board* on consent and causation in a clinical negligence claim, if a baby suffered shoulder dystocia during birth and the mother asserted that she would have asked for a caesarean section if she had been advised about the risk. Considers whether the test of causation should be subjective, or objective based on what a reasonable patient would have done.
- **The law finally reflects good professional practice.** **Reparation Bulletin** 2015, 123, 4-8 – Reports on the landmark Supreme Court judgment in *Montgomery v Lanarkshire Health Board* on whether an obstetrician should have informed a pregnant woman of the risk of shoulder dystocia occurring in a vaginal delivery

in her case and the further risk of the baby being born with brain damage. Highlights the significance of the case in developing the law on consent to medical treatment, with particular reference to the legal status of General Medical Council guidance.

- **Causation in Consent Cases – Where are we now?** B. 2015, 124, 3-6
 - **C (By his Father and Litigation Friend 'F') v North Cumbrian University Hospitals NHS Trust** B 2014, 121(Dec), 6-8 – An analysis of the application of the Bolitho principles to expert evidence (November 2014)
 - **M. as legal representative of RM v Highland Health Board Rep.** B, 2014, 117 (Apr) 7-8 – Bolitho in the CP case
 - **Alexander Glancy v The Southern General Hospital NHS Trust – Consent and emergency surgery** B. 2013, 113 (Aug), 24
 - **Robin Donald and Others v Ayrshire & Arran Health Board and Others** B 2013, 112 (Jun) 7-8 – GP negligence and failure to diagnose DVT (May 2013)
 - **Helen McGlone v Greater Glasgow Health Board**(January 2013) – B. 2017, 135, 5-7 – Failure to diagnose cancer and causation issues
 - **Hannigan v Lanarkshire Acute Hospitals NHS Trust** B 2012, 109 (Dec) 6-7 – Analysis of competing expert evidence and the application of Bolitho in a total hysterectomy
 - **Marjory Campbell v Borders Health Board** B 2011, 100 (Jun), 7-8 – analysis of the concept of direct responsibility of health boards
 - **Nicolas Taaffe v East of England Ambulance Service NHS Trust** (May 2012) Medical Negligence B. 2012, 106(May), 7-8
 - **Recovery of Damages for a 'seriously handicapped' child – The Case of Rand**
 - **The blessing of the unplanned pregnancy – MacFarlane in the House of Lords** (2000) B. 2000, 33(May), 5-7
 - **Multipliers Multiplied – Wells and McNulty** B. 1999, 25(Jan), 4-7
 - **Failed Sterilisation** (1995) B. 1995, 3(May), 4-7
 - **The Brain Damaged Baby** B. 1995, 2(Mar), 3-6
 - **"No Fishing" Recovery of Medical Records pre litigation"** B. 1995, 1(Feb), 3-5
 - **A Single Standard of Care** B. 1995, 6(Nov), 11-12
-
- **A relationship of Mutual Trust Is Pregnancy a Personal Injury?** B. 1995, 5(Sep), 4-6