

## DEBRIEF: A Kings Chambers Podcast Factsheet

### EPISODE 11 – Conversation with Professor Derek Tuffnell

Nigel Poole QC in conversation with Professor Derek Tuffnell.

What is involved in being an expert witness in clinical negligence litigation? What are some of the key issues in cases of cerebral palsy? What is the impact of Montgomery on obstetric practice?

Derek was a Consultant in Obstetrics and Gynaecology at Bradford Teaching Hospitals NHS Trust. He was the lead obstetrician for research in the Maternity Unit and still is a member of the Executive board of the cohort study 'Born in Bradford'. Derek is a MBRRACE Collaborator, overseeing reviews of maternal and perinatal mortality across the UK. His research interests are of all aspects of maternity care particularly High Risk pregnancy (diabetes and hypertension/pre-eclampsia). He was a member of NICE Guideline Development Group for Intrapartum Care and Hypertension in Pregnancy.



### Cases referenced in the Podcast

- [Montgomery v Lanarkshire Health Board \[2015\] UKSC 11, \[2015\] 1 AC 1430](#)
- [Montgomery v Lanarkshire Health Board \[2010\] ScotCS CSOH 104](#)
- [Montgomery v Lanarkshire Health Board \[2007\] ScotSC CSOH 172](#)
- [ML v St Guys and St Thomas' National Healthcare Foundation Trust \[2018\] EWHC 2010 \(QB\)](#)

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**This was the case Professor Tuffnell refers to in relation to guidance from the Court (Martin Spencer J) about consent during labour. The Court said at [90]:**

*“Before leaving this issue, I should say something about the duty of a hospital where a woman requests a caesarean section. It seems to me there is the world of difference between a woman who requests a caesarean section in the ante-natal period and a woman who requests a caesarean section in the throes of labour pain. In the former situation which, as it seems to me, the NICE guidelines are intended to address, such a request needs to be considered carefully and fully by the obstetric staff with the risks and benefits being fully discussed and with time for thought and reflection being given. If, after such discussion and appropriate advice, a woman nevertheless states that she wishes to have a caesarean section, then, as Mr Tuffnell conceded, she would be entitled to have one. However, the situation seems to me to be quite different where a woman is in labour and in extreme pain. As Midwife Kaka-Are and the doctors confirmed, such a request is frequently heard and is more a cry for help because of the pain. In those circumstances, the appropriate response, as here, is to deal with the pain and then review the matter and see whether the request was or was not “serious”. By that I do not intend to suggest that any request for a caesarean section is not serious but an obstetrician or a midwife would be failing in their duty to both mother and baby if they simply took every such request at face value without exploring and addressing the underlying reason. I regard it as significant that, in her statement of 1 November 2010, SL referred to feeling “Much more coherent” after she had been given the epidural. This is a tacit admission that, before the epidural and given the pain she was in, she was less than coherent and I suspect this will be the case for many women undergoing labour for the first time or, indeed, not for the first time. It would in fact be impossible to have the kind of discussion of risk and benefit envisaged by Mr Forbes and the NICE guidelines with a woman who is not wholly coherent and thinking straightforwardly and logically because of the extreme pain she was in and it could be regarded as irresponsible for a midwife or obstetrician to attempt to have such a discussion with a woman before her pain had been addressed. It seems to me that this situation is qualitatively different to the situation in the ante-natal clinic where a request for a caesarean section is made.”*

### Speaker Profiles



#### **Nigel Poole QC**

*Nigel is ranked as a leading QC by Chambers UK and the Legal 500. He is Head of Kings Chambers and sits as a Deputy High Court Judge and a chair of the Bar Tribunal and Adjudication Service. He has appeared in the Supreme Court and Court of Appeal. He is the author of ‘Clinical Negligence Made Clear’ and writes a blog, *Learned Friend*, which receives over 150,000 visits a month.*