

Tom Barclay-Semple

Year of call 2016

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Tom is a health and welfare law specialist, focusing on Court of Protection, clinical negligence, and inquests. He is skilled at getting to grips with complex medico-legal issues in difficult cases.

His clients praise his attention to detail, personable approach, and pragmatic advice.

In the Court of Protection, Tom is regularly instructed on behalf of local authorities, clinical commissioning groups, P, and members of P's family. He has appeared in a wide range of disputes, typically arising out of section 16 and section 21A applications. His practice covers both Health & Welfare and Property & Financial Affairs. Recent matters have included disputes over contact arrangements, overlapping jurisdiction with the Mental Health Act 1983, care arrangements, revoking lasting powers of attorney, medical treatment, and capacity assessments.

Tom's clinical negligence practice encompasses both claimant and defendant work. It builds upon his time working for a nationally recognised law firm before coming to the bar. He is experienced in a wide range of complex and high value clinical negligence disputes, including birth injuries, surgical negligence, dental negligence, delays in diagnosis, fatal injuries, informed consent, and material contribution claims.

His inquest work involves acting for families, NHS Trusts, local authorities, and other interested parties in both *Jamieson* and *Middleton*-style inquests. Tom regularly acts in inquests concerning hospital and nursing home care, deprivations of liberty, and care in the community. He has experience in inquests both with and without a jury sitting.

Expertise

Clinical Negligence & Healthcare

Tom has a particular interest in clinical negligence, which has become a significant part of his practice since joining chambers. He acts on behalf of patients, hospital trusts, GP practices and individual practitioners. He has experience in drafting statements of case, advising on prospects and quantum, CCMCs, JSMs and inquests involving suggestions of clinical negligence. His practice benefits from his experience in a busy clinical negligence department at a leading law firm before coming to the bar. He is happy to advise in matters on an informal basis, particularly in the early stages of claims.

Tom's practice covers all areas of clinical negligence, including orthopaedic surgery, obstetrics, diabetes management, emergency care, mental health, dental, nursing and residential care.

Recent matters include:

- Advising on quantum where the claimant was given ten times the recommended dose of anti-epileptic medication (settled).

- Drafting the Defence on behalf of a GP Surgery in a multi-defendant claim regarding the management of a wound infection (settled).
- Drafting Particulars of Claim and advising on quantum following a stillbirth (settled).
- Advising on prospects on paper and in conference with multiple experts in defending a claim concerning the management of a diabetic foot injury. Tom advised the defendant NHS Trust throughout the claim, attended the CCMC and then successfully resisted the claimant's application to amend the Particulars of Claim before trial (discontinued).
- Representing the defendant NHS Trust in a joint settlement meeting in a matter arising out of alleged dental negligence (settled).
- Advising in conference on prospects and quantum, and drafting the Particulars of Claim, regarding injuries arising from a failure to identify red flag symptoms of cauda equina syndrome (settled shortly after issue).
- Advising the defendant NHS Trust on prospects and quantum, and drafting the Counter Schedule of Loss, in a claim concerning an alleged failure to offer early revascularisation of the patient's leg, causing amputation (settled).
- Advising in conference and drafting Particulars of Claim in a multi-expert case arising from the death of a newborn baby (ongoing).

Inquiries and Investigations

Tom has been involved in numerous inquests during pupillage and since becoming a tenant. He is primarily instructed in relation to healthcare-related deaths, but also accepts instructions concerning deaths in the workplace, prison deaths and road traffic fatalities. He is experienced in drafting submissions, advising on strategy, pre-inquest reviews and final hearings.

Recently concluded cases include:

- Re RY: An eleven-day inquest with a jury concerning the death of a pedestrian struck by collapsing rubble from the facade of a building on the high street. The inquest touched upon the various roles and responsibilities of the interested parties under the CDM regulations and how the wall came to be constructed without wind restraints 14 years prior to its collapse. Tom represented a structural engineer engaged on the project. The conclusion was 'accidental death' and no adverse findings were made against Tom's client.
- Re AA: A three-day inquest involving a death following a fall in a care home, where the Coroner concluded that the death would have been avoidable had the care home carried out risk assessments. Tom acted on behalf of the family. The inquest was followed by the first successful CQC prosecution of a local authority, where the authority admitted failing to provide safe care and treatment. See <https://www.bbc.co.uk/news/uk-england-derbyshire-50715988>.
- Re SD: A three-day Article 2 inquest with a jury concerning the death of a psychiatric patient on permitted leave in a community placement. The inquest involved questions over the communication between the placement, the local authority, and SD's treating clinicians as regards his immediate risk of suicide or death by misadventure. Tom represented the local authority and the jury's conclusion included no adverse findings against Tom's client.
- Re LJW: A three-day Article 2 inquest with a jury concerning a death following the development of septicemia. The inquest involved four interested parties and questions over whether the deceased had received appropriate care in hospital and in the community after developing foot ulcers, which became infected.
- Re CAJ: An inquest concerning the death of a pedestrian involved in a road traffic collision with a taxi. The conclusion was accidental death. Tom acted on behalf of the taxi driver's insurer.
- Re DH: A three-day Article 2 inquest with a jury concerning the death of an inmate due to methadone toxicity. Tom represented the deceased's family. The jury concluded that the prison officers' failure to carry out routine welfare checks contributed to the death.
- Re MAP: A four-day inquest concerning a neonatal death. The inquest explored the impact of failing to consider medical records regarding previous pregnancies and delays in converting to an emergency caesarean section. Tom represented the family. It was concluded that delays in converting to an emergency caesarean contributed to the death.
- Re PT: A two-day inquest concerning the management of the deceased's toxic epidermal necrolysis. The inquest revealed that the deceased was cared for on a ward where clinicians had no experience in dermatology and national guidance for transfer were not followed. Tom represented the family.
- Re RG: A two-day inquest involving a death following a head injury. The issues centred on the advice given to the deceased by the paramedics.
- Re PH: A three-day inquest concerning the death of a patient with dementia who had been injured in a road traffic accident, after he managed to leave a hospital ward without the staff noticing. The Coroner concluded that the failures of the nursing staff amounted to neglect and this contributed to the death. Tom acted on behalf of the deceased's family.
- Re KG: A two-day Article 2 inquest involving the death of a voluntary psychiatric in-patient. The issues concerned whether a different treatment plan or effective communication with the police when the deceased went missing would have prevented the death. Tom represented the family.

Court of Protection: Health & Welfare

Tom is particularly experienced in section 21A applications, section 16 applications, final hearings and round table meetings between the parties. He also has experience of cases where there is an overlap between the Mental Capacity Act 2005 and the Mental Health Act 1983. He has a keen interest in health and welfare matters, having studied medical and mental capacity law at post-graduate level. His practice benefits from his clinical negligence work and his experience in dealing with parties that lack capacity arising out of injuries. Tom takes a collaborative approach and is willing to advise informally from the outset.

He accepts instructions in all areas, including:

- Deprivation of Liberty declarations;
- Welfare decisions;
- Removal of the Nearest Relative.

Recent and ongoing matters include:

- Representing the son of P in a matter where different family members and the local authority could not agree on P's care requirements and whether the LPA ought to be revoked.
- Representing a local authority in proceedings where P's care home were threatening to terminate the placement, owing to P's increasing level of need. Representing a local authority in a matter concerning the inherent jurisdiction, where P was a minor over the age of 16, and best interests declarations were needed.
- Jointly representing a local authority and CCG in proceedings where P's capacity had been described as fluctuating and P's engagement with the public bodies varied.
- Representing the mother of P in proceedings where the CCG sought to remove P from the family home.
- Representing a local authority in s.21A proceedings where agreement could not be reached as to the least restrictive option for P's residence and care needs.
- Representing P through his litigation friend in contested s.21A proceedings concerning whether P should be allowed to return to the family home on a trial basis.
- Representing the CCG in contested s.21A proceedings where P wishes to move out of a care setting and to a different local authority.

Court of Protection: Property & Affairs

Tom undertakes a broad range of property & affairs matters in the Court of Protection. He accepts instructions from all interested parties, including the Office of the Public Guardian, Local Authorities, P, and family members. He regularly appears in applications regarding the mismanagement of P's funds and removing deputies and attorneys.

Recent matters include:

- Representing the OPG in a dispute concerning P's capacity to execute the LPAs and whether the attorneys had breached their duties under the MCA.
- Representing a local authority in a disputed application to become P's deputy for property & financial affairs.
- Representing the OPG in an application to remove P's deputies for failing to comply with the deputyship order.
- Representing the OPG in an application to remove one of two attorneys on the grounds of financial mismanagement.

Administrative & Public Law

As a result of his inquest and Court of Protection practice, Tom advises public bodies, including local authorities and the NHS, on public law matters such as NHS Continuing Healthcare and Ordinary Residence disputes.

Recent matters include:

- Advising a local authority in a long standing dispute over Ordinary Residence, pre-dating the Care Act 2014.
- Advising and representing NHS CCGs in proceedings concerning the failure to provide NHS Continuing Healthcare.
- Advising a local authority on Ordinary Residence in a cross-border matter.
- Advising a local authority on debt recoverability from a third party under the Care Act 2014.

Memberships

- Personal Injury Bar Association (PIBA)
- Professional Negligence Bar Association (PNBA)
- Action against Medical Accidents (AvMA)

- Leeds & District Medico-Legal Society
- Court of Protection Practitioners Association (CoPPA)
- Court of Protection Bar Association (CPBA)
- The Honourable Society of the Inner Temple

Qualifications

- BPTC, BPP Law School (2016)
- LLM (Distinction), Healthcare Ethics and Law, The University of Manchester (2013)
- LLB (Hons), The University of Manchester (2012)

Publications

[R \(Carole Smith\) v HM Assistant Coroner for North West Wales: Causation, admitted failings and what to record in the Record of Inquest](#)

Legal Update by Tom Semple, 21st April 2020

Awards

- Ede & Ravenscroft Pupillage Award (Inner Temple, 2016)
- Personal Injury & Clinical Negligence Prize (Leeds & District Medico-Legal Society / BPP University, 2016)
- Exhibition Award (Inner Temple, 2015)
- Regional BPTC Leader's Scholarship (BPP University, 2014)
- RG Lawson Prize (University of Manchester, 2012)