Wrongful Birth: Exploring the 'scope of duty' and 'but for' tests in light of *Khan v MNX*

Marcus Coates-Walker, Barrister, St John's Chambers

Published on 21 May 2019

BEFORE WE START

1. This talk is focussed on the recent Court of Appeal decision in *Khan v MNX* and its impact on wrongful birth claims. Wrongful birth claims are comprised of a myriad of issues. There are conflicting decisions from the Court of Appeal (COA) and the House of Lords (HOL). Even within individual cases there are conflicting judgments from the appellate judiciary. So, if you have ever found parts as clear as mud then you are in good company!

2. This talk will briefly recap some of the fundamentals behind the current law that governs wrongful birth claims. It by no means seeks to cover all issues (which would be impossible in the time). However, it will hopefully help you to dissect the judgment in *Khan v MNX* and derive from it some practical tips to assist in your practice.

WRONGFUL 'CONCEPTION' AND WRONGFUL 'BIRTH'

Definitions

3. There are a number of situations in which a child is born who would not otherwise have been born following negligence by medical staff. Claims brought by the parents in these circumstances are called "wrongful conception" or "wrongful birth" claims.

4. A "wrongful conception" claim describes the situation where the negligence precedes conception. For example: failed sterilisation procedures, a failure to provide appropriate advice about the risks of a sterilisation operation failing and negligent genetic counselling.

5. A "wrongful birth" claim describes the situation where the negligence occurs after conception but before birth. For example: negligent performance of an abortion or negligent advice (including the absence of advice) about an abortion following negligent screening procedures for foetal handicap.

6. However, it is important to note that there is *no practical difference* in how these two types of claims are dealt with. The Courts have found that it is wrong in principle to distinguish between them. They are the same.

The 'healthy' child

7. The law applicable to wrongful birth claims was considered in the context of a 'healthy child' by the House of Lords in *McFarlane v Tayside Health Board* [2000] 2 A.C. 59:

   (a) **The Facts**: Following a sterilisation operation, C (male) was wrongly and negligently informed that he was no longer fertile. He and his wife stopped taking contraceptive precautions and she became pregnant, giving birth to a healthy baby. C brought a claim for the costs of raising a healthy child.

   (b) **Decision**: The House of Lords held that no duty of care was owed to the parents in respect of the financial cost of bringing up a healthy child following negligent advice about or negligent performance of a sterilisation operation. However, the reasons given varied significantly:

      (i) **Lord Slynn**: The doctor does not assume responsibility for this economic loss and it is not fair, just or reasonable to impose liability.

      (ii) **Lord Steyn**: Principles of distributive justice (as opposed to corrective justice) do not permit such losses to be recovered.

      (iii) **Lord Hope**: The benefits to the parents of having a healthy child are incalculable and therefore it cannot be established that the costs of rearing the child will exceed the value of the benefits.

      (iv) **Lord Clyde and Lord Hope**: The extent of the alleged liability was disproportionate to the duties undertaken by the defendants.

      (v) **Lord Clyde**: It was not reasonable for the pursuers (the claimant) to be relieved of the financial obligations of caring for their child.

(vi) **Lord Millett**: The law must treat the birth of a normal, healthy baby as a blessing, not a detriment. He considered that it was morally offensive to regard a normal, healthy baby as more trouble and expense than it is worth. It would be wrong for parents to enjoy the advantages of parenthood while transferring to others (society) the responsibilities which it entails.

(c) The House of Lords were at pains to say that their decision was not based on 'policy'. However, it is difficult to see what other rationale underpins the decision other than policy or morality. Some suspect that the unarticulated policy underlying the decision was that the NHS should not have to be burdened with the financial cost of such claims when it has other calls on its resources.

(d) The House of Lords considered this issue and *McFarlane* in *Rees v Darlington Memorial Hospital NHS Trust* [2003] UKHL 52. In *Rees*, there was general agreement that applying the ordinary principles of tort law the claim in McFarlane would have succeeded. However, despite an invitation to reconsider McFarlane, the House of Lords were unanimous that it had been correctly decided. They identified three factors as the basis for McFarlane: (a) the impossibility of calculating benefits of having a healthy child; (b) allowing the parents to recover the costs of bringing up a healthy child ran counter to the values which they believed society at large could be expected to hold; and (c) legal policy.

(e) Also note the decision in *ARB v IVF Hammersmith* [2018] EWCA Civ 2803, in which it was held that the legal policy barring damages for the wrongful conception or birth of a child in cases of negligence was equally applicable to a wrongful birth arising from a breach of contract. Accordingly, a father was not entitled to damages after an IVF clinic implanted an embryo containing his gametes into his former partner without his consent, resulting in the birth of a child.

The 'disabled' child

8. An issue that was left untouched by the House of Lords in McFarlane was whether the rejection of the claim for the cost of raising a child also applied where the child happened to have disabilities.

9. The issue was dealt with by the Court of Appeal in two decisions: *Parkinson v St James and Seacroft University Hospital NHS Trust* [2002] QB 266 and *Groom v Selby* [2002] PIQR P18.

10. In *Parkinson*, the claimant had undergone a sterilisation procedure. The operation was negligently performed and she became pregnant. The claimant was warned by a doctor at the defendant's hospital that

the child might be born with a disability but she refused a termination. The claimant subsequently gave birth to a child with severe congenital abnormalities.

11. The Court held that in cases of wrongful birth: (a) the parents were not able to recover the costs of the upbringing and caring for a normal healthy child (*McFarlane* followed); but (b) they were entitled to an award of compensation for the additional expenses associated with bringing up a child with significant disability since the birth of a child with congenital abnormalities was a foreseeable consequence of the surgeon's negligence.

12. The was some (implied) criticism towards the Court's approach in *Parkinson* in the House of Lords' decision in *Rees v Darlington Memorial Hospital NHS Trust* [2003] UKHL 52. For example, it is impossible to draw a distinction between a 'healthy' and 'disabled' child and that foreseeability of the child having a disability was not a sufficient reason to hold a doctor liable for the extra costs attributable to the abnormality. However, strictly speaking, the question of whether the parents of a disabled child should be permitted to maintain an action in respect of the additional costs associated with a child's disabilities did not raise for determination. In *Rees*, the child was healthy and it was the mother who had a disability. However, *Parkinson* has not been expressly overruled and therefore remains good law.

13. In *Groom*, the claimant had undergone a sterilisation test at a time when (unknown to anyone) she was about 6 days pregnant. Several days later she saw the defendant having missed her period and with symptoms including abdominal pain. The defendant negligently failed to carry out or arrange a pregnancy test and failed to examine her to see if she was pregnant. The claimant discovered she was pregnant a few weeks later. Had she known about the pregnancy sooner, she would have terminated it. The child was born apparently healthy, but some four weeks later she was found to be suffering from salmonella meningitis caused by exposure to bacteria from the mother's birth canal and perineal area during the delivery.

14. The Court applied *Parkinson* and held that the claimant was not entitled to recover the ordinary economic costs of bringing up a healthy child. However, she was entitled to recover the additional costs attributable to bringing up a disabled child.

15. In *Parkinson* and *Groom*, the disability was *not* caused directly by the negligence of the defendant. There was *no direct link* between negligence and the ensuing disability. In each case the doctor had undertaken the task of protecting the patient from an unwanted pregnancy. In *Parkinson*, the pregnancy itself. In *Groom*, the continuation of the pregnancy. In both, the disability arose from genetic causes or foreseeable events during the course of the pregnancy which were not due to a new intervening cause. This was deemed a sufficient causal link between the defendants' negligence and the disability of the child in each case and the claimants could recover the additional losses associated with the disability.

The facts

16. The core facts can be summarised as follows:

(a) In January 2006, the Claimant's nephew was born and diagnosed with haemophilia.

(b) In August 2006, the Claimant consulted her GP with a view to establishing whether she was a carrier of the haemophilia gene because she wanted to avoid having a child with haemophilia.

(c) Blood tests were arranged. However, these tests could only establish whether a patient had haemophilia. They could not confirm whether or not the Claimant was a carrier. To obtain that information, the Claimant needed to be referred to a haematologist for genetic testing.

(d) On 25 August 2006, the Claimant saw the Defendant (another GP at the same practice). The Defendant told the Claimant that the blood test results were normal. Given the advice the Claimant received at that consultation and the previous consultation, she was led to believe that any child she had would not have haemophilia.

(e) In 2010, the Claimant became pregnant with FGN. Shortly after his birth, FGN was diagnosed with haemophilia.

(f) The Claimant was referred for genetic testing. This confirmed that she was in fact a carrier of the haemophilia gene.

(g) Had the Claimant been referred for genetic testing in 2006, she would have known she was a carrier before she became pregnant. In those circumstances, she would have undergone foetal testing for haemophilia.

(h) Foetal testing would have revealed that the foetus was affected. In those circumstances, the Claimant would have chosen to terminate her pregnancy and FGN would not have been born.

(i) FGN's haemophilia is severe. At the date of trial, he had been unresponsive to conventional therapy. His joints had been affected by repeated bleeds. He had to endure unpleasant treatment and had to be constantly watched as minor injury would lead to further bleeding.

(j) In December 2015, FGN was diagnosed as also having autism. The fact that FGN had haemophilia did not cause his autism or make it more likely that he would have autism. It was unrelated.

(k) However, the management of FGN's haemophilia was made more complicated by his autism. At the date of trial, FGN was 6 years old. Even at this age there was a gap in his understanding of his haemophilia compared with children of the same age. He does not understand the benefit of the treatment he requires. So his distress is heightened. He will not report to his parents when he has a bleed. This gap in understanding is likely to grow as he becomes older. He is unlikely to be able to learn and retain information, to administer his own medication or to manage his own treatment plan.

(l) In itself, the Claimant's autism is likely to prevent him living independently or being in paid employment in the future.

The issue

17. The parties agreed that the Defendant negligently caused FGN to develop haemophilia by failing to determine that the Claimant was a carrier of the haemophilia gene. The Defendant agreed that the Claimant would have terminated her pregnancy (i.e. but for causation was made out). The Defendant agreed that she could recover the costs associated with FGN's haemophilia. However, it was disputed that the Claimant could recover the costs associated with FGN's autism which the Defendant argued was not related to the negligence.

18. The issue at trial and on appeal can be summarised as follows: Whether, as a matter of law the Defendant's liability should be limited to losses associated with FGN's haemophilia or whether she should be liable for the additional losses associated with both his haemophilia and autism?

19. The answer to this question resulted in the difference between a damages award of £1,400,000 (for the losses associated with FGN's haemophilia) and £9,000,000 (for the losses associated with FGN's haemophilia and autism).

The High Court

20. The Defendant relied on the principle established in *South Australia Management Corporation v York Montague* [1997] AC 191 ('*SAAMCO*'). In *SAAMCO*, the defendants were valuers required by the plaintiffs to value properties on the security of which they were considering advancing money on mortgage. The defendants considerably overvalued the property in each case. Loans were made which would not have been if the plaintiffs had known the true value of the properties. The borrowers defaulted.

The property market fell which increased the losses suffered by the plaintiffs. The House of Lords held that the duty of the defendants in each case had been to provide the plaintiffs with a correct valuation of the property. Where a defendant was under a duty to take reasonable care to provide information on which someone else would decide on a course of action, if they were negligent they were only responsible for the foreseeable consequences of the information being wrong (not for all the consequences of that course of action).

21. Lord Hoffman in *SAAMCO* stated that rules which make the wrongdoer liable for all the consequences of his wrongful conduct are exceptional and need to be justified by some special policy. Normally the law limits liability to those consequences which are attributable to that which made the act wrongful. In the case of liability in negligence for providing inaccurate information, this would mean liability for the consequences of the information being inaccurate. He illustrated this with his now infamous 'mountaineering example': A mountaineer about to undertake a difficult climb is concerned about the fitness of his knee. He goes to a doctor who negligently makes a superficial examination and pronounces the knee fit. The climber goes on the expedition, which he would not have undertaken if the doctor had told him the true state of his knee. He suffers an injury which is an entirely foreseeable consequence of mountaineering but has nothing to do with his knee. In this situation, Lord Hoffman states that the doctor should not be liable. The injury has not been caused by the doctor's bad advice because it would have occurred even if the advice had been correct.

22. The Defendant argued that all the foreseeable risks of the pregnancy cannot be transferred to a doctor who has provided a service in relation only to one risk specific risk (the risk of haemophilia). The loss in respect of FGN's autism was not the kind of loss in respect of which the Defendant's duty was owed. Further, the Defendant had not assumed responsibility to protect the Claimant from all the consequences of her decision to proceed with the pregnancy.

23. The case at first instance was heard by Yip J. She did not accept the Defendant's submissions. Yip J accepted that there is a distinction between a case where a parent does not want to have any child and one where a parent does not want to have a child with a particular disability. However, she was not persuaded that this was an appropriate starting point. She stated that, as a matter of simple 'but for' causation, FGN would not have been born but for the defendant's negligence. The claimant would not have had a child with the combined problems of haemophilia and autism. Had the claimant known she was a carrier, she would have undergone foetal testing and would have terminated her pregnancy. The other risks associated with that pregnancy would no longer have existed.

24. She reviewed the authorities on wrongful birth and placed particular reliance on *Parkinson* and *Groom* (set out above). She also considered the authority of *Chester v Afshar* [2005] 1 AC 134.

25. In *Chester*, the defendant (a neurosurgeon) advised the claimant to undergo a surgical procedure on her spine. This procedure carried a small non-negligent risk of developing cauda equina syndrome (CES). The claimant underwent the procedure and developed CES. At first instance, the judge found that the defendant had negligently failed to warn the claimant of the risk of developing CES. The Court of Appeal held that since the risk which eventuated was likely to be the same no matter how skilfully and carefully it was carried out, the failure to warn neither affected the risk nor was it an effective cause of the claimant's injury. Therefore, on the conventional 'but for' analysis, the claimant could not satisfy the test of causation. However, the House of Lords held that on policy grounds the test of causation was satisfied. The risk that eventuated was within the scope of the duty to warn so that the injury could be regarded as having been caused, in the legal sense, by the breach of that duty.

26. Lord Walker in *Chester* distinguished injury that was merely coincidental. He gave the following example: "*... if a taxi driver drives too fast and the cab is hit by a falling tree, injuring a passenger, it is sheer coincidence. The driver might equally well have avoided the tree by driving too fast, and the passenger might have been injured if the driver was observing the speed limit. But to my mind the present case does not fall into that category. Bare 'but for' causation is powerfully reinforced by the fact that the misfortune which befell the claimant was the very misfortune which was the focus of the surgeon's duty to warn.*"

27. As to the 'scope of duty' argument, Yip J held that the circumstances in this case produced a much closer analogy to *Chester* than to the mountaineer's knee in *SAAMCO*. She stated that the risk of autism was an inevitable risk of any pregnancy. However, it cannot be said that it would probably have materialised in another pregnancy. She explained that in the case of the hypothetical mountaineer in *SAAMCO*, if the advice about his knee had been right he would have gone on to climb the same mountain and would have had the same accident. The risk that materialised (an avalanche) had nothing to do with his knee. On the other hand, she stated that in this case the risk that materialised had everything to do with the continuation of this pregnancy. The autism arose out of this pregnancy which would have been terminated but for the Defendant's negligence.

28. She accepted that a key part of the rationale in *Chester* was that the misfortune which befell the claimant was the very misfortune which was the focus of the surgeon's duty to warn. By contrast, the misfortune which was the focus of the duty in this case was haemophilia not autism. However, she stated that the focus of the Defendant's duty (or purpose of the service to put it another way) was to provide the Claimant with the necessary information to allow her to terminate any pregnancy afflicted by haemophilia. In the circumstances, this pregnancy was as unwanted as that in *Groom*.

29. She stated that once it is established that, had the mother been properly advised she would not have wanted to continue with her pregnancy, should it matter why she would have wanted a termination? Why logically should there be a distinction between the parent who did not want any pregnancy and one who did not want this particular pregnancy? She stated that in each case, the effect of the doctor's negligence was to remove the mother's opportunity to terminate a pregnancy that she would not have wanted to continue. In her view, to draw a distinction on the basis of considering the underlying reason why a mother would have wanted to terminate her pregnancy seems unattractive, arbitrary and unfair.

30. The focus of the Defendant's duty and the very purpose of the service the claimant sought was to provide her with the necessary information to allow her to terminate *any pregnancy* afflicted by haemophilia. The birth of FGN resulted from a pregnancy which was afflicted by haemophilia. His autism was bad luck, in the same way as meningitis in Groom was bad luck. Equally, each condition was the natural consequence of a pregnancy that would not have continued if the doctor's duty had been performed correctly. The scope of the duty in this case extended to preventing the birth of FGN and all the consequences that brought.

31. Therefore, Yip J found that the costs of FGN's unrelated autism were recoverable and damages were assessed in the sum of £9,000,000. The Defendant appealed to the Court of Appeal.

The Court of Appeal

32. On appeal, the Defendant accepted that: (a) the 'but for' test of causation was made out; (b) it was reasonably foreseeable that as a consequence of the Defendant's breach of duty that the Claimant could give birth to a child where the pregnancy would otherwise have been terminated; and (c) any such child could suffer from a condition such as autism.

33. However, the Defendant argued that in determining whether the costs relating to autism were recoverable Yip J was required to apply the "scope of duty test" as set out in *SAAMCO*. The rationale being to protect a defendant from liability for every foreseeable factual consequence of their negligence. The Claimant accepted that the test in *SAAMCO* applied but contended that if the principles were applied to the facts of *Parkinson* and *Groom* the same result would be achieved.

34. The COA identified that the purpose of the Claimant's consultation with the Defendant was to establish whether she was a carrier of the haemophilia gene. The focus of the consultation, advice and appropriate testing was directed at the haemophilia issue and not the wider issue of whether generally the Claimant should become pregnant.

35. They found that this case differs factually from *Parkinson* and *Groom*:

(a) In *Parkinson*, the doctor's duty was to prevent conception. Therefore he assumed responsibility for all the problems of pregnancy.

(b) In *Groom*, the doctor knew the claimant had been sterilised and did not want any further children. His advice was given with that knowledge and in that factual context.

36. Nicola Davies LJ stated that the *SAAMCO* 'scope of duty test' was not only relevant but determinative. She accepted that there were three relevant questions and answered them as follows:

(a) **What was the purpose of the procedure, information or advice which is alleged to have been negligent?** The purpose of the consultation was to put the Claimant in a position to enable her to make an informed decision in respect of any child which she conceived who was subsequently discovered to be carrying the haemophilia gene. It did not extend beyond that. Critically, the possibility of the Claimant giving birth to a child who would suffer from autism never formed part of any discussion or advice. Given the specific enquiry of the Claimant (namely would any future child carry the haemophilia gene) it would be inappropriate and unnecessary for a doctor at such a consultation to volunteer to the person seeking specific information any information about other risks of pregnancy (including autism). This would require knowledge of a variety of factors of which the Defendant was unaware. The Claimant's wishes as to pregnancy generally was a decision for her to take having considered a number of factors.

(b) **What was the appropriate apportionment of risk taking account of the nature of the procedure, information or advice?** The doctor would be liable for the risk of a mother giving birth to a child with haemophilia because there had been no foetal testing and consequent upon it no termination of the pregnancy. The mother would take the risks of all other potential difficulties of the pregnancy and birth both as to herself and to her child.

(c) **What losses would in any event have occurred if the Defendant's advice / information was correct or the procedure had been performed?** The loss which would have been sustained if the correct information had been given and appropriate testing performed would have been that the child would have been born with autism.

37. The COA held that the scope of the Defendant's duty was not to protect the Claimant from *all* the risks associated with becoming pregnant and continuing with the pregnancy. Nicola Davies LJ stated that the *SAAMCO* test requires there to be an adequate link between the breach of duty and the particular type of loss claimed. It is insufficient for the court to find that there is a link between the breach and the stage in

the chain of causation (i.e. the pregnancy itself) and thereafter to conclude that the Defendant is liable for all the reasonably foreseeable consequences of that pregnancy. In finding that the Claimant was deprived of the opportunity to terminate the pregnancy, Yip J was referring to one of the links in the chain of causation. Whereas, following *SAAMCO* the link must be between the scope of the duty and the damage sustained.

38. Further, the Court held that Yip J erred in suggesting that *Chester* produced a much closer analogy than *SAAMCO*. Central to the reasoning in *Chester* was the fact that the misfortune which befell the claimant was the very misfortune that the defendant had a duty to warn against. A fundamental distinction with the facts of this case.

39. In the context of this case, it was held that the development of autism was a coincidental injury and not one within the scope of the Defendant's duty. Therefore, damages were limited to £1,400,000.

PRACTICAL TIPS

40. The following practical tips can be derived from the COA's decision in *Khan v MNX*:

    (a) **The issue in this case is the 'scope of the duty' owed by the Defendant NOT 'but for' causation**: On first blush, this appears to be a strange decision. The Claimant has satisfied 'but for' causation. In other words, she would not have had her baby but for the Defendant's negligent advice. Therefore, how can she not recover the damages associated with all her child's disabilities? Well, it is easiest to see the 'scope of duty' test as one that must be assessed *before* 'but for' causation. If a particular loss does not fall within the scope of the Defendant's duty, then it is irrelevant if 'but for' causation is made out or not. So make sure you put this on your checklist for assessing wrongful birth claims involving disabled children.

    (b) **Significance of *Khan v MNX***: This is a highly significant decision. Defendants will seek to apply the *SAAMCO* scope of duty test for causation broadly. It opens a defence to what the Defendant's Counsel has termed "piggy-back causation". In other words, where a Claimant seeks advice about condition A, which had the advice been competent would have led to condition B being diagnosed and treated. At present it is assumed that if the "but for" test is met then liability will follow. *Khan v MNX* suggests there is more to it than that. It is likely to have greatest significance in cases of a clinical failure to warn. A patient who is negligently not warned as to risk A is unlikely to be able to recover if he or she succumbs to risk B during surgery. However, the ramifications of this decision may prove to be wider. Expect Lord Hoffman's mountain climber analogy in *SAAMCO* and Lord Walker's taxi-driver analogy

in *Chester* to make regular appearances going forward as it is argued that coincidental causation is not enough to found liability.

(c) ***Pomphrey v (1) Secretary of State for Health (2) North Bristol NHS Trust (2019),*** **QBD (Bristol), Judge Cotter QC, 26 April 2019**:

(i) **Facts**: The Claimant's claim was premised on the Defendant's failure to diagnose symptoms consistent with compression of the cauda equina nerve roots. The Court found for the Defendant on most of the allegations of breach of duty. However, it held that there had been a negligent ten day delay in operating on the Claimant to decompress the nerve roots of the cauda equina once the decision to operate had been made. The Claimant was unable to prove that the ten day delay made any difference to the success of the operation. The delay by itself did not worsen his condition or cause him increased disability. However, during the operation the surgeon non-negligently caused a tear in the dura (the membrane that surrounds the spinal cord), leaving the Claimant with very severe and permanent neurological injury. The risk of this non-negligent complication was approximately 7%.

(ii) **The Claim**: The Claimant argued that had the operation been performed ten days earlier, the chance of a dural tear would have been less than 50%. In other words, on the balance of probabilities (but for the negligent delay) the tear would not have occurred and the Claimant would have avoided his serious injury.

(iii) **Decision**: First, the judge found as a fact that the negligent delay made no difference to the outcome of the operation. But for the delay, the operation would still have been carried out by the same surgeon and the same dural tear would have occurred. Therefore, the claim failed on but for causation. The judge also agreed with the submission that the Defendant's scope of duty (to avoid unreasonable delay) did not extend to avoiding a risk inherent in the surgery that he was to undergo. The fact that the Claimant sustained a dural tear was coincidental and not within the scope of the Defendant's duty.

(d) **The *SAAMCO* test is often misunderstood**: This was noted by Lord Sumption in *Hughes-Holland v BPE Solicitors and Another* [2017] UKSC 21 in which he endorsed Lord Hoffman in *SAAMCO*. He observed that the decision in *SAAMCO* has often been misunderstood because of a tendency to overlook two fundamental features of the reasoning:

(i) The first is that where the contribution of the defendant is to supply material which the client will take into account in making his own decision on the basis of a broader assessment of the

risks, the defendant has no legal responsibility for that decision. Otherwise the defendant would become the underwriter of the financial fortunes of the whole transaction by virtue of having assumed a duty of care in relation to just one element of someone else's decision.

(ii) The second (and perhaps more fundamental) feature is that the principle has *nothing to do with the causation of loss*.

(e) **How do I know what falls within the scope of the Defendant's duty?** Use the three questions identified by the Defendant and accepted by the COA in ***Khan v MNX*** (set out above). This will provide a nice structure to your analysis. Remember, the precise purpose of the consultation / advice / procedure is likely to be critical to this issue and whether ultimately you can recover damages. This needs to be explored in detail with the Claimant and within the relevant medical records.

(f) ***Parkinson*** **&** ***Groom*** **are factually different to** ***Khan***: Be careful to recognise the difference where the purpose of the advice, information or procedure concerns the pregnancy generally (*Parkinson* & *Groom*) and where it concerns something more narrow such as a particular disability the child might have (*Khan*). These cases can be distinguished from each other and can ultimately lead to a significant difference in compensation awards!

(g) **Is the COA's decision in** ***Khan v MNX*** **being appealed?**

Marcus Coates-Walker
St John's Chambers

marcus.coates-walker@stjohnschambers.co.uk
21 May 2019